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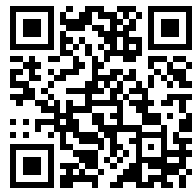

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23

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CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF APRIL 1, 1991

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, **23 CFR 1.1** *refers to title 23, part 1, section 1.*

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..... as of January 1
Title 17 through Title 27 ..... as of April 1
Title 28 through Title 41 ..... as of July 1
Title 42 through Title 50 ..... as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

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Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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MARTHA L. GIRARD,
Director,
Office of the Federal Register.

April 1, 1991.

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THIS TITLE

Title 23—HIGHWAYS is composed of one volume. The contents of this volume represent the current regulations of the National Highway Traffic Safety Administration and the Federal Highway Administration, Department of Transportation, issued under this title of the CFR as of April 1, 1991.

A subject index to the Federal Highway Administration regulations, in Chapters I and II, appears in the back of this volume.

For this volume, Jacquelyn J. Demsky was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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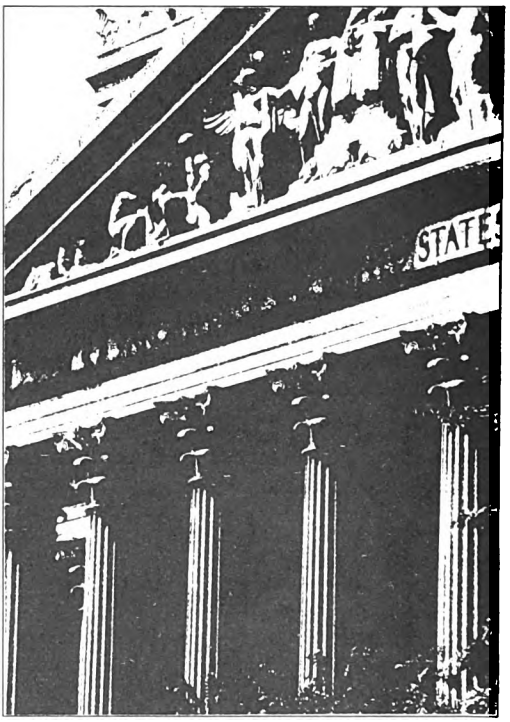

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CROSS REFERENCES: Regulations concerning construction and maintenance of roads on Indian lands, Bureau of Indian Affairs, Department of the Interior: See Indians, 25 CFR part 170.

Regulations of the Bureau of Land Management concerning rights-of-way for roads and highways: See Public Lands, Interior, 43 CFR part 2800.

Employment and Training Administration, Department of Labor: See Employees' Benefits, 20 CFR chapter V.

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SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 1—GENERAL

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1.38 Application of regulations.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b).

SOURCE: 25 FR 4162, May 11, 1960, unless otherwise noted.

§ 1.1 Purpose.

The purpose of the regulations in this part is to implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways.

§ 1.2 Definitions.

(a) Terms defined in 23 U.S.C. 101(a), shall have the same meaning where used in the regulations in this part, except as modified herein.

(b) The following terms where used in the regulations in this part shall have the following meaning:

Administrator. The Federal Highway Administrator.

Advertising policy. The national policy relating to the regulation of outdoor advertising declared in title 23 U.S.C. 131.

Advertising standards. The "National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways" promulgated by the Secretary (part 20 of this chapter).

Federal laws. The provisions of title 23 U.S.C., and all other Federal laws, heretofore or hereafter enacted, relating to Federal aid for highways.

Latest available Federal census. The latest available Federal decennial census, except for the establishment of urban area.

Project. An undertaking by a State highway department for highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for any other work or activity to carry out the provisions of the Federal laws for the administration of Federal aid for highways.

Secondary road plan. A plan for administration of Federal aid for highways on the Federal-aid secondary highway system pursuant to 23 U.S.C. 117.

Secretary. The Secretary of Transportation.

State. Any State of the United States, the District of Columbia and Puerto Rico.

Urban area. An area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available published official Federal census, decennial or special, within boundaries to be fixed by a State highway department, subject to the approval of the Administrator.

[25 FR 4162, May 11, 1960, as amended at 35 FR 18719, Dec. 10, 1970]

§ 1.3 Federal-State cooperation; authority of State highway departments.

The Administrator shall cooperate with the States, through their respective State highway departments, in the construction of Federal-aid highways. Each State highway department, maintained in conformity with 23 U.S.C. 302, shall be authorized, by the laws of the State, to make final decisions for the State in all matters relating to, and to enter into, on behalf

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of the State, all contracts and agreements for projects and to take such other actions on behalf of the State as may be necessary to comply with the Federal laws and the regulations in this part.

§ 1.4 Cooperation of governmental instrumentalities.

The State highway department shall be responsible for any project to be undertaken with the cooperation of, or with funds provided by, any other governmental instrumentality.

§ 1.5 Information furnished by State highway departments.

At the request of the Administrator the State highway department shall furnish to him such information as the Administrator shall deem desirable in administering the Federal-aid highway program.

§ 1.7 Urban area boundaries.

Boundaries of an urban area shall be submitted by the State highway department and be approved by the Administrator prior to the inclusion in a program of any project wholly or partly in such area involving funds authorized for and limited to urban areas.

§ 1.8 [Reserved]

§ 1.9 Limitation on Federal participation.

(a) Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this title, and policies and procedures prescribed by the Administrator. Federal funds shall not be paid on account of any cost incurred prior to authorization by the Administrator to the State highway department to proceed with the project or part thereof involving such cost.

(b) Notwithstanding the provisions of paragraph (a) of this section the Administrator may, upon the request of a State highway department, approve the participation of Federal-aid funds in a previously incurred cost if he finds:

(1) That his approval will not adversely affect the public,

(2) That the State highway department has acted in good faith, and that there has been no willful violation of Federal requirements,

(3) That there has been substantial compliance with all other requirements prescribed by the Administrator, and full compliance with requirements mandated by Federal statute,

(4) That the cost to the United States will not be in excess of the cost which it would have incurred had there been full compliance, and

(5) That the quality of work undertaken has not been impaired.

(c) Any request submitted under paragraph (b) of this section shall be accompanied by a detailed description of the relevant circumstances and facts, and shall explain the necessity for incurring the costs in question.

[38 FR 18368, July 10, 1973]

§ 1.11 Engineering services.

(a) *Federal participation.* Costs of engineering services performed by the State highway department or any instrumentality or entity referred to in paragraph (b) of this section may be eligible for Federal participation only to the extent that such costs are directly attributable and properly allocable to specific projects. Expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in paragraph (b) of this section shall not be eligible for Federal participation.

(b) *Governmental engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of other governmental instrumentalities for making surveys, preparing plans, specifications and estimates, and for supervising the construction of any project.

(c) *Railroad and utility engineering organizations.* The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of the affected railroad companies for railway-highway crossing projects and of the affected utility

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companies for projects involving utility installations.

(d) *Private engineering organizations.* Private engineering organizations may be utilized on projects in accordance with requirements prescribed by the Administrator.

(e) *Responsibility of the State highway department.* The State highway department is not relieved of its responsibilities under Federal law and the regulations in this part in the event it utilizes the services of any engineering organization under paragraphs (b), (c) or (d) of this section.

[25 FR 4162, May 11, 1960, as amended at 53 FR 18276, May 23, 1988]

§ 1.23 Rights-of-way.

(a) *Interest to be acquired.* The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) *Use for highway purposes.* Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with § 1.35 of the regulations in this part.

(c) *Other use or occupancy.* Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.

§ 1.27 Maintenance.

The responsibility imposed upon the State highway department, pursuant to 23 U.S.C. 116, for the maintenance of projects shall be carried out in accordance with policies and procedures issued by the Administrator. The State highway department may provide for such maintenance by formal agreement with any adequately equipped county, municipality or other governmental instrumentality, but such an agreement shall not relieve the State highway department of its responsibility for such maintenance.

§ 1.28 Diversion of highway revenues.

(a) *Reduction in apportionment.* If the Secretary shall find that any State has diverted funds contrary to 23 U.S.C. 126, he shall take such action as he may deem necessary to comply with said provision of law by reducing the first Federal-aid apportionment of primary, secondary and urban funds made to the State after the date of such finding. In any such reduction, each of these funds shall be reduced in the same proportion.

(b) *Furnishing of information.* The Administrator may require any State to submit to him such information as he may deem necessary to assist the Secretary in carrying out the provisions of 23 U.S.C. 126 and paragraph (a) of this section.

§ 1.31 Payments.

States may submit requests for payments of Federal funds claimed to be due on account of a project. Such requests shall be in the form of vouchers as prescribed by the Administrator, and shall be certified and accompanied with such supporting data as the Administrator may require. Such vouchers may be submitted from time to time as the work progresses and shall be submitted promptly after completion of the project to which the voucher pertains.

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§ 1.32 Issuance of directives.

(a) The Administrator shall promulgate and require the observance of policies and procedures, and may take other action as he deems appropriate or necessary for carrying out the provisions and purposes of Federal laws, the policies of the Federal Highway Administration, and the regulations of this part.

(b) The Administrator or his delegated representative, as appropriate, is authorized to issue the following type of directives:

(1) Federal Highway Administration Regulations are issued by the Administrator or his delegate, as necessary, to implement and carry out the provisions of title 23 U.S.C., relating to the administration of Federal aid for highways, direct Federal programs and State and community safety programs; and title 49 U.S.C., relating to motor carrier safety; and other applicable laws and programs under his jurisdiction.

(2) Notices are temporary issuances transmitting one-time or short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(3) Orders are directives limited in volume and contain permanent or longlasting policy, instructions, and procedures. FHWA Orders are to be used primarily as internal FHWA directives.

(4) Joint Interagency Orders and Notices are used by FHWA and the National Highway Traffic Safety Administration (NHTSA) to issue joint policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Program. Where necessary, other joint directives may be issued with other modal administrations within the Department of Transportation.

(5) Manuals are generally designed for use in issuing permanent or longlasting detailed policy and procedure. Some of the major manuals recognized by the FHWA Directives System follow:

(i) The Federal-Aid Highway Program Manual has been established to assemble and organize program material of the type previously contained in the Policy and Procedure and Instructional Memoranda which will continue in effect until specifically revoked or published in the new manual. Regulatory material is printed in italics in the manual and also appears in this code. Nonregulatory material is printed in delegate type.

(ii) The Administrative Manual covers all internal FHWA administrative support functions.

(iii) The Highway Planning Program Manual covers the methods and procedures necessary to conduct the highway planning functions.

(iv) The Research and Development Manual series entitled, "The Federally Coordinated Program of Research and Development in Highway Transportation" describes the FHWA research and development program.

(v) The External Audit Manual provides guidance to FHWA auditors in their review of State programs and processes.

(vi) The Civil Rights and Equal Opportunity Manual provides guidance to FHWA and State Civil Rights and Equal Employment Opportunity Officers.

(vii) The BMCS Operations Manual provides program guidance for all field employees assigned to the motor carrier safety program.

(viii) The Highway Safety Program Manual, issued jointly by FHWA and NHTSA, contains volumes relating to the joint administration of the program.

(6) Handbooks are internal operating instructions published in book form where, because of the program area covered, it is desirable to provide greater detail of administrative and technical instructions.

(7) Transmittals identify and explain the original issuance or page change, provide background information, and provide filing instructions for insertion of new pages and removal of changed pages, or both.

(49 U.S.C. 1655)

[39 FR 1512, Jan. 10, 1974]

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§ 1.33 Conflicts of interest.

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

§ 1.34 Secondary road plan.

The approval by the Administrator of a State's certified statement of its secondary road plan, pursuant to 23 U.S.C. 117 will remain in effect for such time as the Administrator in his discretion may determine.

[46 FR 21156, Apr. 9, 1981]

§ 1.35 Bonus program.

(a) Any agreement entered into by a State pursuant to the provisions of section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, as amended, shall provide for the control or regulation of outdoor advertising, consistent with the advertising policy and standards promulgated by the Administrator, in areas adjacent to the entire mileage of the Interstate System within that State, except such segments as may be excluded from the application of such policy and standards by section 12.

(b) Any such agreement for the control of advertising may provide for establishing publicly owned informational sites, whether publicly or privately operated, within the limits of or adjacent to the right-of-way of the Interstate System on condition that no such site shall be established or maintained except at locations and in accordance with plans, in furtherance of the advertising policy and standards, submitted to and approved by the Administrator.

(c) No advertising right in the acquisition of which Federal funds participated shall be disposed of without the prior approval of the Administrator.

[39 FR 28628, Aug. 9, 1974]

§ 1.36 Compliance with Federal laws and regulations.

If the Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State, and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

§ 1.37 Delegation of authority.

The Administrator has been delegated authority to perform the functions vested in the Secretary under Federal law.

The Administrator is authorized to redelegate any power or authority conferred upon him to any other official or employee of the Federal Highway Administration as in his judgment will result in efficiency and economy in the effectuation of the purposes of Federal law and the regulations in this part. Any redelegation by the Administrator may include the power to make successive redelegations of authority to the extent deemed desirable by him. Delegations made under regu-

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lations heretofore in effect shall continue in full force and effect until modified or revoked.

[25 FR 4162, May 11, 1960, as amended at 35 FR 18719, Dec. 10, 1970; 38 FR 11086, May 4, 1973]

§ 1.38 Application of regulations.

The regulations in this part shall take effect upon publication in the FEDERAL REGISTER and shall supersede all regulations heretofore in effect for carrying out the provisions of Federal laws.

PART 12—SINGLE AUDIT REQUIREMENTS

Sec.
12.1 Purpose.
12.3 Audit requirements.
12.5 SHA responsibilities.
12.7 Cognizant agency responsibilities.
12.9 FHWA program reviews.
12.11 SHA internal audit function.
12.13 Audit costs.

AUTHORITY: 23 U.S.C. 315; 31 U.S.C. 7501-7507; 49 CFR 1.48(b).

SOURCE: 51 FR 22932, June 24, 1986, unless otherwise noted.

§ 12.1 Purpose.

To implement the requirements of the Single Audit Act of 1984 (Pub. L. 98-502, 98 Stat. 2327).

§ 12.3 Audit requirements.

(a) State highway agencies (SHA) and local government agencies (including metropolitan planning organizations) which receive Federal-aid highway funds shall comply with the audit requirements established in 49 CFR part 90 as clarified by this part.

(b) The auditor shall determine if the amounts claimed or used for matching were in accordance with:

(1) 49 CFR part 90, appendix A, paragraph 8b, and

(2) Part 1 and part 140 of this chapter which prohibit Federal participation in (i) certain maintenance, administration, supervision, and overhead costs of the SHA, and (ii) costs which have not been incurred by the SHA, such as in-kind contributions.

§ 12.5 SHA responsibilities.

(a) The SHA is responsible for ensuring that its operations are audited in accordance with 49 CFR part 90 and that findings reported in the audit are properly resolved. The SHA shall submit copies of the following documents to the Federal Highway Administration (FHWA) and the Department of Transportation (DOT), Office of Inspector General (OIG):

(1) The audit report on its operations,

(2) Any management letters that are issued in connection with the audit, and

(3) The plan for correction of reported findings.

(b) The SHA is responsible for ensuring that subrecipients receiving Federal-aid highway funds through the SHA are audited in accordance with § 12.3. The SHA shall receive and retain the audit reports issued on the operations of subrecipients. When requested by FHWA, the SHA shall provide copies of these audit reports to FHWA.

(Approved by the Office of Management and Budget under control number 2125-0502)

§ 12.7 Cognizant agency responsibilities.

When the Office of Management and Budget (OMB) designates the DOT as the cognizant agency for an SHA, the FHWA and the OIG will share the cognizant agency responsibilities identified in 49 CFR part 90, appendix A, paragraph 11. FHWA is responsible for ensuring that audits are made, reports are received, findings are resolved, and corrective actions are taken. The OIG is responsible for ensuring that audits comply with the audit requirements, providing technical advice, and advising the SHA when the OIG determines that the audit does not meet the audit requirements.

§ 12.9 FHWA program reviews.

Nothing in this part precludes the FHWA from performing program reviews on the operations of a State or local government agency which has received Federal-aid highway funds.

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§ 12.11 SHA internal audit function.

The SHAs are encouraged to maintain an effective internal audit function. This function is a valuable internal control and, as such, should be evaluated by the independent auditor as part of the internal control review. The independent auditor should rely on the work of the internal auditors to avoid duplication of audit work.

§ 12.13 Audit costs.

Notwithstanding the provisions of 49 CFR part 90, appendix A, paragraph 16, SHAs desiring reimbursement from FHWA for audit costs shall claim those costs in accordance with part 140, subpart H of this chapter.

PART 17—RECORDKEEPING AND RETENTION REQUIREMENTS FOR FEDERAL-AID HIGHWAY, RECORDS OF STATE HIGHWAY AGENCIES

Sec.
17.1 Purpose.
17.3 Definitions.
17.5 Requirements.
17.7 Authorization to microfilm records.
17.9 Waiver.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.45 and 1.48(b); OMB Circular A-102.

SOURCE: 43 FR 41387, Sept. 18, 1978, unless otherwise noted.

§ 17.1 Purpose.

This regulation prescribes the recordkeeping and retention requirements for the Federal-aid highway program.

§ 17.3 Definitions.

As used in this regulation:

(a) *Records.* Includes all accounts, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by any agency, firm, or individual in connection with the transaction of Federal-aid highway business. This includes, but is not limited to, financial records, supporting documents, statistical records, and other records pertinent to Federal-aid highway projects.

(b) *Retention period.* The minimum period of time records are required to be held by the Federal Highway Administration (FHWA). Other governmental (Federal as well as State, municipal, etc.) or private entities may require or choose longer periods.

(c) *Federal-aid highway program.* All activity undertaken by a non-Federal governmental agency, business firm, or individual in connection with Federal grants-in-aid related to title 23, United States Code.

§ 17.5 Requirements.

(a) State record systems and requirements for maintaining documentation concerned with the Federal-aid highway program will meet applicable requirements of Federal and State laws and regulations, establish a sound basis for auditing the State program, and be consistent with generally accepted records management and accounting practices.

(b) Records pertaining to the Federal-aid highway program shall be retained for a minimum period of 3 years with the following exceptions:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after the final disposition of the property.

(3) Records which have been transferred to the Federal Highway Administration for retention.

(4) Toll facility records shall be retained for 3 years subsequent to the date when the facility became operable on a toll-free basis.

(c) The start of retention periods for State and third parties is as follows:

(1) *State records.* (i) For project oriented records, the 3-year retention period starts when the final voucher is submitted.

(ii) For cost accounting and fiscal records which usually relate to more than one project and are not project oriented, the 3-year retention period starts at the end of the State's fiscal year in which an entry is made.

(2) *Third party records.* For third party records, the 3-year retention

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period starts when the third party receives final payment.

(d) FHWA may, from time to time, request transfer of records from State and local governments when it is determined that these records possess long-term retention value. However, to avoid duplicate recordkeeping, the Division Administrator may make arrangements with State and local governments to retain any records which are continuously needed for joint use.

(e) State or third parties should not limit access to Federal-aid highway records on the basis of this regulation. Federal-aid highway records need be kept confidential only when FHWA can demonstrate that such records must be kept confidential and would be exempted from disclosure under the Freedom of Information Act (5 U.S.C. 552) if the records were FHWA records.

(f) All records shall be available at all reasonable times for inspection by any authorized representative of the Federal Government and copies thereof shall be furnished when requested.

[43 FR 41387, Sept. 18, 1978, as amended at 44 FR 36383, Jun. 22, 1979]

§ 17.7 Authorization to microfilm records.

Microfilmed copies may be used in lieu of original records subject to the following requirements:

(a) Copies must be legible and contain all the significant record detail shown on the originals.

(b) Copies shall be so arranged, identified and indexed so that any individual document or component of the records can be located with reasonable facility.

(c) Copies shall be adequate substitutes for the original records and serve the purposes for which such records were created or maintained.

§ 17.9 Waiver.

The granting of a waiver to the provisions of this regulation is expressly reserved to the Federal Highway Administrator subject to:

(a) Full written justification demonstrating unusual circumstances by the requesting party,

(b) An indication that compliance would be an unreasonable burden upon the State or contractor, and

(c) A determination by FHWA that the waiver is in the public interest.

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SUBCHAPTER B—PAYMENT PROCEDURES

PART 130—ADVANCE OF FUNDS

Subparts A—C [Reserved]

Subpart D—Advance Right-of-Way Revolving Funds

Sec.
130.401 Purpose.
130.403 Request for advance.
130.405 Reports and audits.
130.407 Repayment.
130.409 Method of repayment.

Subparts A—C [Reserved]

Subpart D—Advance Right-of-Way Revolving Funds

AUTHORITY: 23 U.S.C. 108(c); 23 U.S.C. 315; and 49 CFR 1.48(b).

SOURCE: 41 FR 27962, July 8, 1976, unless otherwise noted.

§ 130.401 Purpose.

To prescribe procedures and accounting requirements for advances from the right-of-way revolving fund.

§ 130.403 Request for advance.

Subsequent to obligations of funds in accordance with 23 CFR part 712, subpart G, a State desiring an advance of right-of-way revolving funds shall submit a letter of request to the Division Administrator. This letter shall include the following:

(a) Project numbers.

(b) Amount of advance per project required to:

(1) Meet estimated needs for next 90 days, after deducting property management income for the current period, or

(2) Pay grantors based on net recorded liabilities or net actual disbursements after deduction of any property management income.

(c) A statement that includes the following:

(1) Advance will be disbursed in accordance with provisions of 23 U.S.C. 108(c).

(2) When advance is commingled with other funds, controls that will permit FHWA audit of the advance will be provided.

(3) Interest earned on the advance will be paid promptly to FHWA.

[41 FR 27962, July 8, 1976, as amended at 43 FR 5514, Feb. 9, 1978]

§ 130.405 Reports and audits.

(a) Each month any State utilizing the procedures under § 130.403(b) shall submit to the Division Administrator for transmittal to the Regional Office a Statement showing:

(1) The date and amount of advances received, by project.

(2) Total expenditures through the 15th of the month, by project. The statement of advance and expenditures shall be forwarded promptly to insure receipt by the Regional Office by the 20th day of each month.

(b) The Division Administrator shall arrange for such periodic audit of the advance accounts as will determine compliance with the provisions of this regulation.

§ 130.407 Repayment.

The State is required to repay the total amount of advance on a project as follows:

(a) Immediately upon termination of the period of time within which actual construction must be commenced (10 years following the end of the fiscal year in which the Secretary approves such advance of funds, unless the Secretary provides for an earlier or later termination date), or

(b) Upon approval by FHWA of the plans, specifications, and estimates for such project for the actual construction on the rights-of-way for which funds were advanced, or

(c) When a project funded from the right-of-way revolving fund is withdrawn or is converted to a regular Federal-aid project.

§ 130.409 Method of repayment.

(a) If a project is terminated by expiration of the period of time within which actual construction must be commenced or by withdrawal, the State shall repay the amounts advanced for the project by check drawn to the order of the "Federal Highway

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Administration." Any net income remaining from property management activities shall be repaid by separate check.

(b) When a right-of-way project is converted to a regularly funded Federal-air right-of-way project, full repayment will be made by check as in paragraph (a) of this section. Any net income remaining from property management activities may be shown as a previous payment on the first voucher submission on the regularly funded project or repaid by check as in paragraph (a) of this section.

(c) Any cash remaining to the credit of an active right-of-way revolving fund project for which no further expenditures are anticipated shall be remitted to the Federal Highway Administration. Separate checks for amounts advanced and for net income from property management are required as in paragraph (a) of this section.

[41 FR 27962, July 8, 1976, as amended at 43 FR 5514, Feb. 9, 1978]

PART 140—REIMBURSEMENT

Subpart A—Reimbursement Vouchers

Sec.
140.101 Purpose.
140.103 Submission of claims for reimbursement.
140.105 Progress vouchers.
140.107 Final vouchers.
140.109 Reclaims.
140.111 Retention of records.

Subpart B—Construction Engineering Costs

140.201 Purpose.
140.203 Policies.
140.205 Application of limitation.

Subparts C—D [Reserved]

Subpart E—Administrative Settlement Costs—Contract Claims

140.501 Purpose.
140.503 Definition.
140.505 Reimbursable costs.

Subpart F—Reimbursement for Bond Issue Projects

140.601 Purpose.
140.602 Requirements and conditions.
140.603 Programs.
140.604 Reimbursable schedule.
140.605 Approval actions.
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140.608 Reimbursable bond interest costs of Interstate projects.
140.609 Progress and final vouchers.
140.610 Conversion from bond issue to funded project status.
140.611 Determination of bond retirement.
140.612 Cash management.

APPENDIX TO SUBPART F—REIMBURSABLE SCHEDULE FOR CONVERTED "E" (BOND ISSUE) PROJECTS (OTHER THAN INTERSTATE PROJECTS)

Subpart G—Payroll and Related Expense of Public Employees; General Administration and Other Overhead; and Cost Accumulation Centers and Distribution Methods

140.701 Purpose.
140.703 Reimbursable costs.
140.705 Salaries and wages.
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140.709 Employee leave and holidays.
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Subpart H—State Highway Agency Audit Expense

140.801 Purpose.
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Subpart I—Reimbursement for Railroad Work

140.900 Purpose.
140.902 Applicability.
140.904 Reimbursement basis.
140.906 Labor costs.
140.907 Overhead and indirect construction costs.
140.908 Materials and supplies.
140.910 Equipment.
140.912 Transportation.
140.914 Credits for improvements.
140.916 Protection.
140.918 Maintenance and extended construction.
140.920 Lump sum payments.
140.922 Billings.

AUTHORITY: 23 U.S.C. 101(e), 114(a), 120, 121, 122 and 315; and 49 CFR 1.48(b).

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Subpart A—Reimbursement Vouchers

SOURCE: 43 FR 57872, Dec. 11, 1978, unless otherwise noted.

§ 140.101 Purpose.

The purpose of this regulation is to prescribe billing procedures to be followed by State Highway Agencies (SHA) in claiming reimbursable costs incurred for work performed under the provisions of title 23, United States Code.

§ 140.103 Submission of claims for reimbursement.

All claims by a SHA for the Federal share of project costs are to be made, as appropriate, on forms PR-20,[1] "Voucher for Work Performed under Provisions of the Federal-Aid and Federal Highway Acts, as amended," or FHWA-1447,[1] "Voucher for Payment under Certification Acceptance." These vouchers commonly referred to as *progress vouchers* or *final vouchers*, are submitted to the Federal Highway Administration (FHWA) Division Administrator for reimbursement.

§ 140.105 Progress vouchers.

A progress voucher represents a claim for costs incurred in a specific period during the progress of a project. In preparing a progress voucher, all eligible costs shall be included, provided that a recorded liability exists or a cash disbursement has been made.

§ 140.107 Final vouchers.

(a) A final voucher represents the final claim, submitted by an SHA to FHWA for a single completed and FHWA-accepted project, in which all project costs incurred and the amount of Federal reimbursements paid are summarized. Each SHA shall promptly submit its final claim for a project following the project completion.

(b) A summary of project costs, classified by work type, shall accompany the final voucher.

(c) Costs for planning and research projects shall be summarized by the individual phases of work.

[1] These forms are available for inspection and copying as prescribed in 49 CFR 7, appendix D.

§ 140.109 Reclaims.

The State highway agency may appeal any disallowed costs to the Division Administrator within a reasonable time, not to exceed 9 months.

§ 140.111 Retention of records.

Recordkeeping requirements will be as prescribed in 23 CFR part 17, "Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies.

Subpart B—Construction Engineering Costs

SOURCE: 55 FR 35904, Sept. 4, 1990, unless otherwise noted.

§ 140.201 Purpose.

The purpose of this subpart is to prescribe policies for claiming reimbursement for eligible construction engineering (CE) costs.

§ 140.203 Policy.

(a) States may be reimbursed for the Federal share of CE costs incurred as described in § 140.703 of the CFR.

(b) Reimbursement of CE costs is limited to 15 percent of the costs of construction on a project, exclusive of the costs of preliminary engineering, CE, and rights-of-way.

(c) The 15 percent limitation applies to projects for which a final voucher was not approved prior to April 2, 1987.

(d) The estimated CE costs approved at the time of project authorization shall be based on the amount of costs the SHA expects to incur, not to exceed the 15 percent limitation.

(e) If the SHA claims CE costs as an average percentage of the actual construction costs in accordance with 23 U.S.C. 120(h), the average rate shall be determined based upon reimbursable CE costs. If the individual projects used in developing the average percentage contain CE costs exceeding the limitation established in 23 U.S.C. 121(d), then those excess costs shall not be included in determining the average percentage.

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§ 140.205 Application of limitation.

All projects financed with Federal-aid highway funds are subject to the limitation except for projects funded from the following categories:

(a) Emergency Relief (23 U.S.C. 125),

(b) Federal Lands Highways (23 U.S.C. 204),

(c) Defense Access Roads (23 U.S.C. 210),

(d) Appalachian Development Highways (section 201 of Pub. L. 89-4, 79 Stat. 5),

(e) Public Lands Development Roads and Trails (23 U.S.C. 214), and

(f) Other categories determined by FHWA to be exempt from the limitation.

Subparts C—D [Reserved]

Subpart E—Administrative Settlement Costs—Contract Claims

SOURCE: 44 FR 59233, Oct. 15, 1979, unless otherwise noted.

§ 140.501 Purpose.

This regulation establishes the criteria for eligibility for reimbursement of administrative settlement costs in defense of contract claims on projects performed by a State under Federal-aid procedures.

§ 140.503 Definition.

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or his/her authorized representative, attorneys, and/or members of State boards of arbitration, appeals boards, or similar tribunals, which are allocable to the findings and determinations of contract claims, but not including administrative or overhead costs.

§ 140.505 Reimbursable costs.

(a) Federal funds may participate in administrative settlement costs which are:

(1) Incurred after notice of claim,

(2) Properly supported,

(3) Directly allocable to a specific Federal-aid or Federal project,

(4) For employment of special counsel for review and defense of contract claims, when

(i) Recommended by the State Attorney General or State Highway Agency (SHA) legal counsel and

(ii) Approved in advance by the FHWA Division Administrator, with advice of FHWA Regional Counsel, and

(5) For travel and transportation expenses, if in accord with established policy and practices.

(b) No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any kind by SHA officials with respect to the claim.

Subpart F—Reimbursement for Bond Issue Projects

SOURCE: 48 FR 54971, Dec. 8, 1983, unless otherwise noted.

§ 140.601 Purpose.

To prescribe policies and procedures for the use of Federal funds by State highway agencies (SHAs) to aid in the retirement of the principal and interest of bonds, pursuant to 23 U.S.C. 122 and the payment of interest on bonds of eligible Interstate projects.

§ 140.602 Requirements and conditions.

(a) An SHA that uses the proceeds of bonds issued by the State, a county, city or other political subdivision of the State, for the construction of projects on the Federal-aid primary or Interstate system, or extensions of any of the Federal-aid highway systems in urban areas, or for substitute highway projects approved under 23 U.S.C. 103(e)(4), may claim payment of any portion of such sums apportioned to it for expenditures on such system to aid in the retirement of the principal of bonds at their maturities, to the the extent that the proceeds of bonds have actually been expended in the construction of projects.

(b) Any interest earned and payable on bonds, the proceeds of which were expended on Interstate projects after November 6, 1978, is an eligible cost of construction. The amount of interest eligible for participation will be based

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on (1) the date the proceeds were expended on the project, (2) amount expended, and (3) the date of conversion to a regularly funded project. As provided for in section 115(c), Pub. L. 95-599, November 6, 1978, interest on bonds issued in any fiscal year by a State after November 6, 1978, may be paid under the authority of 23 U.S.C. 122 only if such SHA was eligible to obligate Interstate Discretionary funds under the provisions of 23 U.S.C. 118(b) during such fiscal year, and the Administrator certifies that such eligible SHA has utilized, or will utilize to the fullest extent possible during such fiscal year, its authority to obligate funds under 23 U.S.C. 118(b).

(c) The Federal share payable at the time of conversion, as provided for in § 140.610 shall be the legal pro rata in effect at the time of execution of the project agreement for the bond issue project.

(d) The authorization of a bond issue project does not constitute a commitment of Federal funds until the project is converted to a regular Federal-aid project as provided for in § 140.610.

(e) Reimbursements for the redemption of bonds may not precede, by more than 60 days, the scheduled date of the retirement of the bonds.

(f) Federal funds are not eligible for payment into sinking funds created and maintained for the subsequent retirement of bonds.

§ 140.603 Programs.

Programs covering projects to be financed from the proceeds of bonds shall be prepared and submitted to FHWA. Project designations shall be the same as for regular Federal-aid projects except that the prefix letter "B" for bond issue shall be used as the first letter of each project designation, e.g., "BI" for Bond Issue Projects—Interstate.

§ 140.604 Reimbursable schedule.

Projects to be financed from other than Interstate funds shall be subject to a 36-month reimbursable schedule upon conversion to regular Federal-aid financing (See appendix). FHWA will consider requests for waiver of this provision at the time of conversion action. Waivers are subject to the availability of liquidating cash.

§ 140.605 Approval actions.

(a) Authorization to proceed with preliminary engineering and acquisition of rights-of-way shall be issued in the same manner as for regularly financed Federal-aid projects.

(b) Authorization of physical construction shall be given in the same manner as for regularly financed Federal-aid projects. The total cost and Federal funds required, including interest, shall be indicated in the plans, specifications, and estimates.

(c) Projects subject to the reimbursable schedule shall be identified as an "E" project when the SHA is authorized to proceed with all or any phase of the work.

(d) Concurrence in the award of contracts shall be given.

§ 140.606 Project agreements.

Project Agreements, Form PR-2, shall be prepared and executed. Agreement provision 8 on the reverse side of Form PR-2 [1] shall apply for bond issue projects.

§ 140.607 Construction.

Construction shall be supervised by the SHA in the same manner as for regularly financed Federal-aid projects. The FHWA will make construction inspections and reports.

§ 140.608 Reimbursable bond interest costs of Interstate projects.

(a) Bond interest earned on bonds actually retired may be reimbursed on the Federal pro rata basis applicable to such projects in accordance with § 140.602(b) and (c).

(b) No interest will be reimbursed for bonds issued after November 6, 1978, used to retire or otherwise refinance bonds issued prior to that date.

§ 140.609 Progress and final vouchers.

(a) Progress vouchers may be submitted for the Federal share of bonds retired or about to be retired, includ-

[1] The text of FHWA Form PR-2 is found in 23 CFR part 630, subpart C, appendix A.

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ing eligible interest on Interstate Bond Issue Projects, the proceeds of which have actually been expended for the construction of the project.

(b) Upon completion of a bond issue project, a final voucher shall be submitted by the SHA. After final review, the SHA will be advised as to the total cost and Federal fund participation for the project.

§ 140.610 Conversion from bond issue to funded project status.

(a) At such time as the SHA elects to apply available apportioned Federal-aid funds to the retirement of bonds, including eligible interest earned and payable on Interstate Bond Projects, subject to available obligational authority, its claim shall be supported by appropriate certifications as follows:

I hereby certify that the following bonds, (list), the proceeds of which have been actually expended in the construction of bond issue projects authorized by title 23 U.S.C., section 122, (1) have been retired on ——, or (2) mature and are scheduled for retirement on ——, which is —— days in advance of the maturity date of ——.

Eligible interest claimed on Interstate Bond Projects shall be shown for each bond and the certification shall include the statement:

I also certify that interest earned and paid or payable for each bond listed has been determined from the date on and after which the respective bond proceeds were actually expended on the project.

(b) The SHA's request for full conversion of a completed projects), or partial conversion of an active or completed project(s), may be made by letter, inclusive of the appropriate certification as described in § 140.610(a) making reference to any progress payments received or the final voucher(s) previously submitted and approved in accordance with § 140.609.

(c) Approval of the conversion action shall be by the Division Administrator.

(d) The SHA's request for partial conversion of an active or completed bond issue project shall provide for: (1) Conversion to funded project status of the portion to be financed out of the balance of currently available apportioned funds, and (2) retention of the unfunded portion of the project in the bond program.

(e) Where the SHA's request involves the partial conversion of a completed bond issue project, payment of the Federal funds made available under the conversion action shall be accomplished through use of Form PR-20, Voucher for Work Performed under Provisions of the Federal-aid and Federal Highway Acts, prepared in the division office and appropriately cross-referenced to the Bond Issue Project final voucher previously submitted and approved. The final voucher will be reduced by the amount of the approved reimbursement.

§ 140.611 Determination of bond retirement.

Division Administrators shall be responsible for the prompt review of the SHA's records to determine that bonds issued to finance the projects and for which reimbursement has been made, including eligible bond interest expense, have been retired pursuant to the State's certification required by § 140.610(a), and that such action is documented in the project file.

§ 140.612 Cash management.

By July 1 of each year the SHA will provide FHWA with a schedule, including the anticipated claims for reimbursement, of bond projects to be converted during the next two fiscal years. The data will be used by FHWA in determining liquidating cash required to finance such conversions.

Appendix to Subpart F—Reimbursable Schedule for Converted "E" (Bond Issue) Projects (other than Interstate Projects)

Time in months following conversion from "E" (bond issue) project to regular project	Cumulative amount reimbursable (percent of Federal funds obligated)
1	1
2	2
3	5
4	9
5	13
6	18
7	23
8	29
9	34
10	39

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Time in months following conversion from "E" (bond issue) project to regular project	Cumulative amount reimbursable (percent of Federal funds obligated)
11	44
12	49
13	54
14	58
15	61
16	64
17	67
18	70
19	73
20	75
21	77
22	79
23	81
24	83
25	85
26	87
27	89
28	91
29	93
30	94
31	95
32	96
34	97
35	99
36	100

Subpart G—Payroll and Related Expense of Public Employees; General Administration and Other Overhead; and Cost Accumulation Centers and Distribution Methods

SOURCE: 46 FR 3501, Jan. 15, 1981, unless otherwise noted.

§ 140.701 Purpose.

To prescribe policies and procedures for reimbursing a State highway agency (SHA) for the costs of salaries, wages, and related costs incurred by its employees or by those of a county, city, or other local public agency (LPA) for the benefit of a federally participating highway project.

§ 140.703 Reimbursable costs.

The costs of salaries, wages, and related costs may be reimbursable for the following activities:

(a) *Preliminary engineering.* Location, design, and related work preparatory to the advancement of a project to physical construction.

(b) *Construction engineering.* The supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

(c) *Acquisition of rights-of-way.* The preparation of right-of-way plans; making economic studies and other related preliminary work; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses.

(d) *Highway planning.* The orderly and continuing assembly and analysis of information about highways, such as the history of development and their extent, dimensions and conditions, use, economic and social effects, costs, and future needs.

(e) *Research and development.* The search for more complete knowledge of the characteristics of the highway system and the translation of the results of research into practice.

(f) *Administrative settlement costs-contract claims.* Services related to the review and defense of claims against Federal-aid projects, as provided for in subpart E of part 140 of this title, Administrative Settlement Costs-Contract Claims.

(g) *Miscellaneous functions.* Costs incurred for other activities which are properly attributable to, and for the benefit of, Federal-aid projects but are not assignable to any of the previously defined functions.

§ 140.705 Salaries and wages.

(a) Subject to appropriate authorization requirements, Federal funds may participate in the cost of salaries, wages, and related payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in project-related activities.

(b) Salaries, wages, and related payroll expenses of an SHA for maintenance, general administration, supervision and other overhead are not eligible for reimbursement except as provided for in paragraph (b) of § 140.713.

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§ 140.707 Travel and transportation.

(a) Federal funds may participate in the cost of commercial transportation, privately owned automobiles, and per diem or subsistence which is essential to the prosecution of the project and is performed in accordance with prescribed procedures.

(b) Reimbursement may be made for use of privately owned automobiles and per diem or subsistence which is incurred in conformance with established reimbursement policy of the SHA or LPA.

§ 140.709 Employee leave and holidays.

(a) An SHA or LPA may claim reimbursement for the costs of leave, i.e., annual, sick, military, jury, etc., that is earned, accounted for, and used in accordance with established procedures. The cost of such leave must be a liability of the SHA or LPA, must be equitably distributed to all activities, and the pro rata costs distributed to a Federal-aid project must be representative of the amount that is earned and accrued while working on the project.

(b) Compensatory leave granted by an SHA or LPA in lieu of payment of overtime to eligible employees may be claimed for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.

(c) Costs for other leave of a similar nature which may be peculiar to a specific SHA or LPA may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.

§ 140.711 Social security, retirement, and other payroll benefits.

(a) Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums, and similar items applicable to salaries and wages of public employees engaged in work in Federal-aid projects.

(b) The costs for such benefits must be a liability of the SHA or LPA and must meet the criteria set forth in paragraph (a) of § 140.709.

§ 140.713 General administration and other overhead.

(a) General administration, supervision, and other unallowable overhead costs of an SHA are those considered necessary for the management, supervision, and administrative control of a suitably equipped, staffed and operational SHA. Examples of such unallowable costs may include, but are not limited to, the following types of personnel, related payroll benefit costs, and other administrative or support services;

(1) Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.

(2) Related clerical, secretarial, and other support services for officials and personnel listed in paragraph (a)(1) of this section.

(3) Management, supervision, and administrative overhead costs incurred by other units or departments of State, county, or city governmental organizations.

(b) Costs incurred for services rendered by employees generally classified as administrative may, however, be considered eligible for reimbursement for:

(1) A highway planning unit and a research and development unit, in the ratio of time spent on the participating portion of work in the unit to the total unit's working hours, and

(2) Other operating units if such employees are assigned for specific identifiable periods of time to perform project-related activities in the same manner as other operating personnel.

[46 FR 3501, Jan. 15, 1981, as amended at 49 FR 45578, Nov. 19, 1984]

§ 140.715 Use of cost accumulation centers and cost distribution methods.

(a) Cost accumulation centers, i.e., cost centers, cost pools, or other acceptable cost accumulation methods, may be used to capture related types of costs for later distribution to all projects or other benefitting activities for which work was performed during the accounting period. The accounting and cost distribution procedures must be in accordance with paragraph (b) of this section for types of costs incurred under the following general criteria:

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(1) Salaries, wages and related payroll benefit costs may be incurred during a payroll accounting period which affects a number of projects and, therefore, may not be easily adaptable to charging directly to individual projects due to such factors as (i) incompatibility of time increments for individual projects, (ii) an inordinate amount of time or additional number of documents to provide separate project coding, or (iii) a documented reduction of overhead costs in the elimination of processing source and coding required, increased electronic data processing applications, and additional accounting requirements.

(2) Small items of costs may be incurred which affect several projects and would result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.

(3) Items of costs may otherwise be eligible for reimbursement but, due to their nature and the small amounts involved, they are not being claimed for reimbursement, since the additional overhead costs required for separate project coding and effective internal controls are not cost beneficial in relation to separate project reimbursable amounts.

(4) The items of costs must be directly attributable to and properly allocable to the projects to which they are distributed. They must not lose their identity, i.e., type, amount, purpose for which incurred, whether federally participating, input source, etc.

(b) The use of separate cost accumulation centers for comparably related types of costs is a prerequisite to the use of percentages, or other acceptable distribution methods, for cost distribution to benefitting projects or other activities. The accounting procedures and methods of distribution used must have prior concurrence of the Federal Highway Administration, be representative of average actual costs, and must assure that (1) costs are uniformly and equitably distributed to all projects and activities for which work was performed during the accounting period irrespective of source of funds, (2) provisions are established for an adequate segregation of costs and separate distribution methods for similarly related types of costs, (3) actual costs and liabilities are fully accounted for and controlled, and (4) that reviews are made periodically, and the rates or other distribution methods are adjusted at least once annually by any over or under-distributed accumulated costs from the cost accumulation center for the preceding accounting period.

(c) Percentages representative of average actual costs may be used to distribute leave, social security, and other payroll benefits. Such rates are based on prior cost experience adjusted by anticipated known factors which will affect overall costs during the current year, i.e., scheduled salary increases, changes anticipated in insurance premiums, etc.

Subpart H—State Highway Agency Audit Expense

SOURCE: 49 FR 45578, Nov. 19, 1984, unless otherwise noted.

§ 140.801 Purpose.

To establish the reimbursement criteria for Federal participation in project related audit expenses.

§ 140.803 Policy.

Project related audits performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable Federal laws and regulations are eligible for Federal participation. The State highway agency (SHA) may use other State, local public agency, and Federal audit organizations as well as licensed or certified public accounting firms to augment its audit force.

§ 140.805 Definitions.

(a) *Project related audits.* Audits which directly benefit Federal-aid highway projects. Audits performed in accordance with the requirements of 23 CFR part 12, audits of third party contract costs, and other audits providing assurance that a recipient has complied with FHWA regulations are all considered project related audits. Audits benefiting only nonfederal

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projects, those performed for SHA management use only, or those serving similar nonfederal purposes are not considered project related.

(b) *Third party contract costs.* Project related costs incurred by railroads, utilities, consultants, governmental instrumentalities, universities, nonprofit organizations, construction contractors (force account work), and organizations engaged in right-of-way studies, planning, research, or related activities where the terms of a proposal or contract (including lump sum) necessitate an audit. Construction contracts (except force account work) are not included in this group.

§ 140.807 Reimbursable costs.

(a) Federal funds may be used to reimburse an SHA for the following types of project related audit costs:

(1) Salaries, wages, and related costs paid to public employees in accordance with subpart G of this part,

(2) Payments by the SHA to any Federal, State, or local public agency audit organization, and

(3) Payments by the SHA to licensed or certified public accounting firms.

(b) Audit costs incurred by an SHA shall be equitably distributed to all benefiting parties. The portion of these costs allocated to the Federal-Aid Highway Program which are not directly related to a specific project or projects shall be equitably distributed, as a minimum, to the major FHWA funding categories in that State.

Subpart I—Reimbursement for Railroad Work

SOURCE: 40 FR 16057, Apr. 9, 1975, unless otherwise noted.

§ 140.900 Purpose.

The purpose of this subpart is to prescribe policies and procedures on reimbursement to the States for railroad work done on projects undertaken pursuant to the provisions of 23 CFR, part 646, subpart B.

§ 140.902 Applicability.

This subpart, and all references hereinafter made to "projects," applies to Federal-aid projects involving railroad facilities, including projects for the elimination of hazards of railroad-highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.

§ 140.904 Reimbursement basis.

(a) *General.* On projects involving the elimination of hazards of railroad-highway crossings, and on other projects where a railroad company is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs incurred by the State in making changes to railroad facilities as required in connection with a Federal-aid highway project, in accordance with the provisions of this subpart.

(b) *Eligibility.* To be eligible, the costs must be:

(1) For work which is included in an approved program,

(2) Incurred subsequent to the date of authorization by the Federal Highway Administration (FHWA),

(3) Incurred in accordance with the provisions of 23 CFR, part 646, subpart B, and

(4) Properly attributable to the project.

[40 FR 16057, Apr. 9, 1975, as amended at 53 FR 18276, May 23, 1988]

§ 140.906 Labor costs.

(a) *General.* (1) Salaries and wages, at actual or average rates, and related expenses paid by a company to individuals, for the time they are working on the project, are reimbursable when supported by adequate records. This shall include labor costs associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the company may be reimbursed for the time they are working directly on the project, such as for accounting and bill preparation, when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been ac-

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complished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(b) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the company has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the company or a company may, at its option, use an additive rate or other similar technique in lieu of actual costs provided that (i) the rate is based on historical cost data of the company, (ii) such rate is representative of actual costs incurred, (iii) the rate is adjusted at least annually taking into consideration known anticipated changes and correcting for any over or under applied costs for the preceding period, and (iv) the rate is approved by the SHA and FHWA.

(2) Where the company is a self-insurer there may be reimbursement at experience rates properly developed from actual costs, not to exceed the rates of a regular insurance company for the class of employment covered.

[40 FR 16057, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

§ 140.907 Overhead and indirect construction costs.

(a) A State may elect to reimburse the railroad company for its overhead and indirect construction costs.

(b) The FHWA will participate in these costs provided that:

(1) The costs are distributed to all applicable work orders and other functions on an equitable and uniform basis in accordance with generally accepted accounting principles;

(2) The costs included in the distribution are limited to costs actually incurred by the railroad;

(3) The costs are eligible in accordance with the Federal Acquisition Regulation (48 CFR), part 31, Contract Cost Principles and Procedures, relating to contracts with commercial organizations;

(4) The costs are considered reasonable;

(5) Records are readily available at a single location which adequately support the costs included in the distribution, the method used for distributing the costs, and the basis for determining additive rates;

(6) The rates are adjusted at least annually taking into consideration any overrecovery or underrecovery of costs; and

(7) The railroad maintains written procedures which assure proper control and distribution of the overhead and indirect construction costs.

[53 FR 18276, May 23, 1988]

§ 140.908 Materials and supplies.

(a) *Procurement.* Materials and supplies, if available, are to be furnished from company stock, except they may be obtained from other sources near the project site when available at less cost. Where not available from company stock, they may be purchased either under competitive bids or existing continuing contracts, under which the lowest available prices are developed. Minor quantities and proprietary products are excluded from these requirements. The company shall not be required to change its existing standards for materials used in permanent changes to its facilities.

(b) *Costs.* (1) Materials and supplies furnished from company stock shall be billed at current stock price of such new or used material at time of issue.

(2) Materials and supplies not furnished from company stock shall be billed at actual costs to the company delivered to the point of entry on the railroad company's line nearest the source of procurement.

(3) A reasonable cost of plant inspection and testing may be included in the costs of materials and supplies where such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates and allowances.

(c) *Materials recovered.* (1) Materials recovered from temporary use and accepted for reuse by the company shall be credited to the project at prices charged to the job, less a consideration for loss in service life at 10 percent for rails, angle bars, tie plates and metal

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turnout materials and 15 percent for all other materials. Materials recovered from the permanent facility of the company that are accepted by the company for return to stock shall be credited to the project at current stock prices of such used material.

(2) Materials recovered and not accepted for reuse by the company, if determined to have a net sale value, shall be sold by the State or railroad following an opportunity for State inspection and appropriate solicitation for bids, to the highest bidder; or if the company practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by the records of the company. Where applicable, credit for materials recovered from the permanent facility in length or quantities in excess of that being placed should be reduced to reflect any increased cost of railroad operation resulting from the adjustment.

(d) *Removal costs.* Federal participation in the costs of removing, salvaging, transporting, and handling recovered materials will be limited to the value of materials recovered, except where FHWA approves additional measures for restoration of affected areas as required by the physical construction or by reason of safety or aesthetics.

(e) *Handling costs.* The actual and direct costs of handling and loading out of materials and supplies at and from company stores or material yards and of unloading and handling of recovered materials accepted by the company at its stores or material yards, are reimbursable. At the option of the company, 5 percent of the amounts billed for the materials and supplies which are issued from company stores and material yards will be reimbursable in lieu of actual costs.

(f) *Credit losses.* On projects where a company actually suffers loss by application of credits, the company shall have the opportunity of submitting a detailed statement of such loss as a basis for further adjustment.

§ 140.910 Equipment.

(a) *Company owned equipment.* Cost of company-owned equipment may be reimbursed for the average or actual cost of operation, light and running repairs, and depreciation, or at industry rates representative of actual costs as agreed to by the railroad, SHA, and FHWA. Reimbursement for company-owned vehicles may be made at average or actual costs or at rates of recorded use per mile which are representative of actual costs and agreed to by the company, SHA, and FHWA.

(b) *Other equipment.* Where company owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable cost, or (3) as an exception, by negotiation where (b) (1) and (2) are impractical due to project location or schedule.

[40 FR 16057, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

§ 140.912 Transportation.

(a) *Employees.* The company's cost of necessary employee transportation and subsistence directly attributable to the project, which is consistent with overall policy of the company, is reimbursable.

(b) *Materials, supplies, and equipment.* The most economical movement of materials, supplies and equipment to the project and necessary return to storage, including the associated costs of loading and unloading equipment, is reimbursable. Transportation by a railroad company over its own lines in a revenue train is reimbursable at average or actual costs, at rates which are representative of actual costs, or at rates which the company charges its customers for similar shipments provided the rate structure is documented and available to the public. These rates are to be agreed to by the company, SHA, and FHWA. No charge will be made for transportation by work train other than the operating expenses of the work train. When it is more practicable or more economical to move equipment on its own wheels, reimbursement may be made at average or actual costs or at rates which are representative of actual costs and are agreed to by the railroad, SHA, and FHWA.

[40 FR 16057, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

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§ 140.914 Credits for improvements.

(a) Credit shall be made to the project for additions or improvements which provide for higher quality or increased service capability of the operating facility and which are provided solely for the benefit of the company.

(b) Where buildings and other depreciable structures of a company which are integral to operation of rail traffic must be replaced, credit shall be made to the project as set forth in 23 CFR 646.216(c)(2).

(c) No credit is required for additions or improvements which are:

(1) Necessitated by the requirements of the highway project.

(2) Replacements which, although not identical, are of equivalent standard.

(3) Replacements of devices or materials no longer regularly manufactured and the next highest grade or size is used.

(4) Required by governmental and appropriate regulatory commission requirements.

§ 140.916 Protection.

The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the State-railroad agreement or in a work order issued by the State and approved by FHWA.

§ 140.918 Maintenance and extended construction.

The cost of maintenance and extended construction is reimbursable to the extent provided for in 23 CFR 646.216(f)(4), and where included in the State-Railroad Agreement or otherwise approved by the State and FHWA.

§ 140.920 Lump sum payments.

Where approved by FHWA, pursuant to 23 CFR 646.216(d)(3), reimbursement may be made as a lump sum payment, in lieu of actual costs.

§ 140.922 Billings.

(a) After the executed State-Railroad Agreement has been approved by FHWA, the company may be reimbursed on progress billings of incurred costs. Costs for materials stockpiled at the project site or specifically purchased and delivered to the company for use on the project may be reimbursed on progress billings following approval of the executed State-Railroad Agreement or the written agreement under 23 CFR 646.218(c).

(b) The company shall provide one final and complete billing of all incurred costs, or of the agreed-to lump sum, at the earliest practicable date. The final billing to FHWA shall include a State certification that the work is complete, acceptable and in accordance with the terms of the agreement.

(c) All company cost records and accounts relating to the project are subject to audit by representatives of the State and/or the Federal Government for a period of three years from the date final payment has been received by the company.

(d) A railroad company must advise the State promptly of any outstanding obligation of the State's contractor for services furnished by the company such as protective services.

[40 FR 16057, Apr. 9, 1975, as amended at 40 FR 29712, July 15, 1975]

PART 172—ADMINISTRATION OF NEGOTIATED CONTRACTS

Sec.
172.1 Purpose.
172.3 Application.
172.5 Definitions.
172.7 Procurement standards.
172.9 Contract provisions.
172.11 Approvals.

AUTHORITY: 23 U.S.C. 104(f), 114(a), 307(c), 315, and 402; 49 CFR 1.48(b).

SOURCE: 44 FR 75553, Dec. 20, 1979, unless otherwise noted.

§ 172.1 Purpose.

To set forth policies and standards for negotiated contracts to ensure that a qualified contractor is obtained through an equitable selection process, and that prescribed work is prop-

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erly accomplished in a timely manner, at a just and reasonable cost.

§ 172.3 Application.

(a) These policies and standards are to be followed by State and local government agencies in the procurement of services, supplies, or equipment through negotiated contracts with funds made available under title 23, United States Code.

(b) This regulation applies to the following activities:

(1) Planning, research, and development;

(2) Preliminary engineering;

(3) Construction engineering; and

(4) Highway related safety program.

(c) Procedural requirements for other negotiated contracts are contained in applicable regulations and directives for the respective program areas. Procurements not covered by this regulation include:

(1) Construction contracts;

(2) Utility or railroad company administered contracts for utility relocations or railroad-highway projects;

(3) Supportive services and on-the-job-training contracts;

(4) Contracts for right-of-way activities; and

(5) Contracts under the rural highway public transportation program.

§ 172.5 Definitions.

The terms used in this regulation are defined in 23 U.S.C. 101(a); 23 CFR 450, subpart A; 48 CFR chapter 1; OMB Cricular No. A-102; as supplemented below.

(a) *Contracting agency.* The State highway agency (SHA), Governor's highway safety representative (GHSR), or local government which has responsibility for the procurement.

(b) *Local government.* For purposes of this regulation, local governments also include Metropolitan Planning Organizations (MPOs) as defined in 23 CFR 450.104.

(c) *Planning, research, and development.* Activities undertaken utilizing funds made available under 23 U.S.C. 104(f) or 307(c).

(d) *Preliminary engineering.* All project oriented work leading to an involved in the production of construction plans, specifications, and estimates including environmental assessments, public liaison, surveys, design, and related work.

(e) *Construction engineering.* Surveys and stakeouts, inspections, testing materials, checking shop drawings, revising plans, reporting construction operations, preparing periodic estimates, and related work.

(f) *Highway related safety program.* All activities undertaken utilizing funds made available under 23 U.S.C. 402 which are administered by the Federal Highway Administration (FHWA).

(g) *Audit evaluation.* Examination of contractor records made in accordance with generally accepted auditing standards, including "Standards of Governmental Organizations, Programs, Activities, and Functions" published by the General Accounting Office.

[44 FR 75553, Dec. 20, 1979, as amended at 51 FR 22800, June 23, 1986]

§ 172.7 Procurement standards.

(a) The contracting agency shall comply with the standards of Attachment O, OMB Circular No. A-102, and this regulation in establishing procedures for the procurement of services, supplies, or equipment with Federal funds.

(b) The SHA's and GHSR's procedures shall ensure that procurement actions by or through other State agencies or local governments comply with Attachment O, OMB Circular No. A-102, and this regulation.

(c) Before a contract is awarded, the contracting agency shall determine and document in its files that the proposal has been subjected to technical and cost or price evaluations, as appropriate, and how the results of these evaluations were considered in the contract negotiations. Appropriate cost or price evaluations shall include:

(1) An audit evaluation prior to negotiation of proposals for which the total costs exceed, or are expected to exceed, $50,000.

(2) Audit evaluations of proposals of less than $50,000 where a valid need exists, such as:

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(i) Inadequate knowledge concerning the prospective contractor's accounting policies, cost systems, or substantially changed methods or levels of operation;

(ii) Previous unfavorable experience indicating doubtful reliability of the prospective contractor's estimating, accounting, or purchasing methods, or

(iii) Procurement of a new product for which cost experience is lacking.

(d) Contracting agencies may establish cost principles for determining the reasonableness and allowability of costs. Reimbursement will be limited to the Federal share of costs which are allowable under the Federal cost principles contained in 48 CFR, chapter 1, part 31, Federal Acquisition Regulation (FAR 31). Specifically, these are:

(1) For contracts between the State or local governments and commercial organizations, subpart 31.2, as modified by § 31.103;

(2) For contracts between the State or local governments and educational institutions, subpart 31.3; and

(3) For contracts between the State and local governments, or between local governments, subpart 31.6.

(e) Applicable cost principles shall be reference in each contractual document.

(f) Contract administration procedures shall provide for:

(1) Determining contractor conformance with the terms, conditions, and specifications of the contract and the propriety of claims prior to final settlement of all contracts;

(2) Determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of 48 CFR, chapter 1, part 31.

(3) The maintenance of accounting records that are supported by source documentation, and that will facilitate comparison of actual to proposed costs;

(4) The control, utilization and disposition of property or equipment acquired using Federal funds. The procedures shall comply with the property management standards set forth in Attachment N, OMB Circular No. A-102.

[44 FR 75553, Dec. 20, 1979, as amended at 51 FR 22800, June 23, 1986]

§ 172.9 Contract provisions.

The contracting agency shall ensure that all contracts include, to the extent appropriate, provisions required by Attachment O, OMB Circular No. A-102, and the following:

(a) *Civil rights.* All contracts awarded by grantees, subgrantees, and their contractors shall contain provisions requiring compliance with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR part 21 through appendix C and 23 CFR 710.405(b) shall be made applicable by reference in all contracts and subcontracts financed in whole or in part with Federal-aid highway funds.

(b) *Documentation.* Contracts, where appropriate, shall provide that the contractor document the results of the work to the satisfaction of the contracting agency and the FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the contract objectives.

(c) *Patent rights.* Applicable patent rights provisions described in 48 CFR, chapter 1, part 27 regarding rights to inventions shall be included in contracts as appropriate.

(d) *Copyrights.* The contracting agency may permit copyrighting of reports or other contract products. If copyrights are permitted, the contract shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

(e) *Subcontracts.* (1) All contracts shall show that the prime contractor is required to perform all work except specialized services or other tasks specifically exempted in the contract, except that governmental recipients of 23 U.S.C. 104(f) or 402 funds may subcontract as necessary to accomplish approved work program activities.

(2) All contracts shall provide that subcontracts exceeding $10,000 in cost shall contain all required provisions of the prime contract.

(f) *Other provisions.* Following is a list of other provisions normally included in contracts:

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(1) Scope of work;
(2) Time period covered;
(3) Contract price, including limiting amounts for all contracts;
(4) Changes in work;
(5) Disputes;
(6) Obligations of contracting agency;
(7) Ownership of documents;
(8) Inspection of work; and
(9) Equipment and instrumentation required.

[44 FR 75553, Dec. 20, 1979, as amended at 51 FR 22800, June 23, 1986]

§ 172.11 Approvals.

(a) The FHWA will evaluate the SHA's and the GHSR's procurement procedures, as necessary, to ascertain compliance with Attachment O, OMB Circular No. A-102, and this regulation.

(b) The SHA's and GHSR's are encouraged to perform reviews of subgrantees procurement systems to minimize the need to review individual contracts.

(c) In the absence of acceptable procurement procedures, individual contracts exceeding $10,000 in cost, along with information showing compliance with Attachment O, OMB Circular No. A-102, and this regulation, shall be submitted for approval by the FHWA prior to execution.

(d) For every contract, the proposed work must receive prior FHWA approval and authorization as a project or as part of a program. Significant changes in the scope of work of a contract shall also be submitted for FHWA review and approval prior to proceeding with the new work. Significant changes are those which require execution of supplemental agreements.

PART 190—INCENTIVE PAYMENTS FOR CONTROLLING OUTDOOR ADVERTISING ON THE INTERSTATE SYSTEM

Sec.
190.1 Purpose.
190.3 Agreement to control advertising.
190.5 Bonus project claims.
190.7 Processing of claims.

AUTHORITY: 23 U.S.C. 131(j) and 315; 49 CFR 1.48(b).

SOURCE: 43 FR 42742, Sept. 21, 1978, unless otherwise noted.

§ 190.1 Purpose.

The purpose of this regulation is to prescribe project procedures for making the incentive payments authorized by 23 U.S.C. 131(j).

§ 190.3 Agreement to control advertising.

To qualify for the bonus payment, a State must have entered into an agreement with the Secretary to control outdoor advertising. It must fulfill, and must continue to fulfill its obligations under such agreement consistent with 23 CFR 750.101.

§ 190.5 Bonus project claims.

(a) The State may claim payment by submitting a form PR-20 voucher, supported by strip maps which identify advertising control limits and areas excluded from the claim and form FHWA-1175, for the one-half percent bonus claim.

(b) The bonus payment computation is based on projects or portions thereof for which (1) the section of highway on which the project is located has been opened to traffic, and (2) final payment has been made. A bonus project may cover an individual project, a part thereof, or a combination of projects, on a section of an Interstate route.

(c) The eligible system mileage to be shown for a bonus project is that on which advertising controls are in effect. The eligible system mileage reported in subsequent projects on the same Interstate route section should cover only the additional system mileage not previously reported. Eligible project cost is the total participating cost (State and Federal share of approved preliminary engineering (PE), right-of-way (R-O-W), and construction) exclusive of any ineligible costs. The amount of the bonus payment is to be based on the eligible total costs of the supporting projects included in each claim.

(d) Progress vouchers for route sections on which additional one-half percent bonus payments are to be claimed

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are to be so identified, and the final claim for each route section is to be identified as the final voucher.

§ 190.7 Processing of claims.

Audited and approved PR-20 vouchers with form FHWA-1175 shall be forwarded to the regional office for submission to the Finance Division, Washington Headquarters, for payment. The associated strip maps shall be retained with the division office copies of the PR-20 vouchers.

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SUBCHAPTER C—CIVIL RIGHTS

PART 200—TITLE VI PROGRAM AND RELATED STATUTES—IMPLEMENTATION AND REVIEW PROCEDURES

Sec.
200.1 Purpose.
200.3 Application of this part.
200.5 Definitions.
200.7 FHWA Title VI policy.
200.9 State highway agency responsibilities.
200.11 Procedures for processing Title VI reviews.
200.13 Certification acceptance.

AUTHORITY: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

SOURCE: 41 FR 53982, Dec. 10, 1976, unless otherwise noted.

§ 200.1 Purpose.

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal-aid highway program.

§ 200.3 Application of this part.

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under § 200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

§ 200.5 Definitions.

The following definitions shall apply for the purpose of this part:

(a) *Affirmative action.* A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.

(b) *Beneficiary.* Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally assisted program, i.e., relocatees, impacted citizens, communities, etc.

(c) *Citizen participation.* An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

(d) *Compliance.* That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

(e) *Deficiency status.* The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.

(f) *Discrimination.* That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C.

(g) *Facility.* Includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and *the provision of facilities* includes the construction, expansion, renovation, remodeling, alternation or acquisition of facilities.

(h) *Federal assistance.* Includes:

(1) Grants and loans of Federal funds,

(2) The grant or donation of Federal property and interests in property,

(3) The detail of Federal personnel,

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in

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recognition of the public interest to be served by such sale or lease to the recipient, and

(5) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

(i) *Noncompliance.* A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.

(j) *Persons.* Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic", "Asian or Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.

(k) *Program.* Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(l) *State highway agency.* That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* would be considered equivalent to *State highway agency* if the context so implies.

(m) *Program area officials.* The officials in FHWA who are responsible for carrying out technical program responsibilities.

(n) *Recipient.* Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term *recipient* does not include any ultimate beneficiary under any such program.

(o) *Secretary.* The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.

(p) *Title VI Program.* The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

(1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–d4 (49 CFR part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1050.2; Executive Order 11764; 28 CFR 50.3);

(2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (49 CFR part 25; Pub. L. 91–646);

(3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601–3619);

(4) 23 U.S.C. 109(h);

(5) 23 U.S.C. 324;

(6) Subsequent Federal-Aid Highway Acts and related statutes.

§ 200.7 FHWA Title VI policy.

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR part 21; and related statutes and regulations.

§ 200.9 State highway agency responsibilities.

(a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.

(1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires

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assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

(2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.

(3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.

(4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.

(b) *State actions.* (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

(2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.

(3) Develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.

(4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.

(5) Develop a program to conduct Title VI reviews of program areas.

(6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.

(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

(8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.

(9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.

(10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

(11) Beginning October 1, 1976, each State highway agency shall annually submit an updated Title VI implementing plan to the Regional Federal

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Highway Administrator for approval or disapproval.

(12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.

(13) Establishing procedures for pregrant and postgrant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.

(14) Establish procedures to identify and eliminate discrimination when found to exist.

(15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

§ 200.11 Procedures for processing Title VI reviews.

(a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.

(b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

(c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or noncurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

§ 200.13 Certification acceptance.

Title VI and related statutes requirements apply to all State highway agencies. States and FHWA divisions operating under certification acceptance shall monitor the Title VI aspects of the program by conducting annual reviews and submitting required reports in accordance with guidelines set forth in this document.

PART 230—EXTERNAL PROGRAMS

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AUTHORITY: 23 U.S.C. 140 and 315; E.O. 11246; 49 CFR 1.48(b)24, unless otherwise noted.

SOURCE: 40 FR 28053, July 3, 1975, unless otherwise noted.

Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)

§ 230.101 Purpose.

The purpose of the regulations in this subpart is to prescribe the policies, procedures, and guides relative to the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts, except for those contracts awarded under 23 U.S.C. 117, and to the preparation and submission of reports pursuant thereto.

§ 230.103 Definitions.

For purposes of this subpart—

Administrator means the Federal Highway Administrator.

Areawide Plan means an affirmative action plan to increase minority utilization of crafts in a specified geographical area pursuant to Executive Order 11246, and taking the form of either a "Hometown" or an "Imposed" plan.

Bid conditions means contract requirements which have been issued by OFCC for purposes of implementing a Hometown Plan.

Division Administrator means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

Division Equal Opportunity Officer means an individual with staff level responsibilities and necessary authority by which to operate as an Equal Opportunity Officer in a Division office. Normally the Equal Opportunity Officer will be a full-time civil rights specialist serving as staff assistant to the Division Administrator.

Hometown Plan means a voluntary areawide plan which was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

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Imposed Plan means an affirmative action requirement for a specified geographical area made mandatory by OFCC and, in some areas, by the courts.

Journeyman means a person who is capable of performing all the duties within a given job classification or craft.

State highway agency means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency.*

Suggested minimum annual training goals means goals which have been assigned to each State highway agency annually for the purpose of specifying training positions on selected Federal-aid highway construction projects.

Supportive services means those services provided in connection with approved on-the-job training programs for highway construction workers and highway contractors which are designed to increase the overall effectiveness of training programs through the performance of functions determined to be necessary in connection with such programs, but which are not generally considered as comprising part of actual on-the-job craft training.

Trainee means a person who received on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

[40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.105 Applicability.

(a) *Federal-aid highway construction projects.* This subpart applies to all Federal-aid highway construction projects and to Appalachian highway construction projects and other State supervised cooperative highway construction projects except:

(1) Federal-aided highway construction projects being constructed pursuant to 23 U.S.C. 117; and

(2) Those projects located in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or a "Hometown" Plan, except for those requirements pertaining to specific provisions involving on-the-job training and those provisions pertaining to supportive services and reporting requirements.

(b) *Direct Federal highway construction projects.* This subpart applies to all direct Federal highway construction projects except:

(1) For those provisions relating to the special requirements for the provision of supportive services; and

(2) For those provisions relating to implementation of specific equal employment opportunity requirements in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or "Hometown" plan.

§ 230.107 Policy.

(a) *Direct Federal and Federal-aid highway construction projects.* It is the policy of the FHWA to require that all direct Federal and Federal-aid highway construction contracts include the same specific equal employment opportunity requirements. It is also the policy to require that all direct Federal and Federal-aid highway construction subcontracts of $10,000 or more (not including contracts for supplying materials) include these same requirements.

(b) *Federal-aid highway construction projects.* It is the policy of the FHWA to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry. Moreover, it is the policy of the Federal Highway Administration to encourage the provision of supportive services which will increase the effectiveness of approved on-the-job training programs conducted in connection with Federal-aid highway construction projects.

§ 230.109 Implementation of specific Equal Employment Opportunity requirements.

(a) *Federal-aid highway construction projects.* The special provisions set forth in appendix A shall be included in the advertised bidding proposal and made part of the contract for each contract and each covered

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Federal-aid highway construction subcontract.

(b) *Direct Federal highway construction projects.* Advertising, award and contract administration procedures for direct Federal highway construction contracts shall be as set forth in Federal Acquisition Regulations (48 CFR, chapter 1, section 22.803(c)). In order to obtain information required by 48 CFR, chapter 1, § 22.804-2(c), the following requirement shall be included at the end of the bid schedule in the proposal and contract assembly:

I expect to employ the following firms as subcontractors on this project: (Naming subcontractors at this time does not constitute a binding commitment on the bidder to retain such subcontractors, nor will failure to enter names affect the contract award):

Name ———————————
Address ———————————
Name ———————————
Address ———————————

[40 FR 28053, July 3, 1975, as amended at 51 FR 22800, June 23, 1986]

§ 230.111 Implementation of special requirements for the provision of on-the-job training.

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in § 230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

(1) Availability of minorities, women, and disadvantaged for training.

(2) The potential for effective training.

(3) Duration of the contract.

(4) Dollar value of the contract.

(5) Total normal work force that the average bidder could be expected to use.

(6) Geographic location.

(7) Type of work.

(8) The need for additional journeymen in the area.

(9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on the contractor's work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

(1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.

(2) The development of full journeymen.

(3) The minimum length and type of training.

(4) The minimum wages of trainees.

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(5) Trainees certifications.

(6) Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA.

[40 FR 28053, July 3, 1975; 40 FR 57358, Dec. 9, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140(b), for the provision of supportive services in support of training programs approved under this directive.

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Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.

(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs. State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;

(5) Followup services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects;

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, followup procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273, and a statement of nondiscrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite perriod of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a 6 month followup review of the employment status of each graduate who

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completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received under paragraph (b)(5) of this section, to the division office.

[40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.

Direct Federal and Federal-aid contracts to be performed in "Hometown" or "Imposed" Plan areas will incorporate the special provision set forth in appendix G.

§ 230.117 Reimbursement procedures (Federal-aid highway construction projects only).

(a) *On-the-job special training provisions.* State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) *Supportive services.* (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year's allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State's need for and ability to use such funds.

§ 230.119 Monitoring of supportive services.

Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.

§ 230.121 Reports.

(a) Employment reports on Federal-aid highway construction contracts not subject to "Hometown" or "Imposed" plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to "Hometown" or "Imposed" plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for report-

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ing purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to "Hometown" or "Imposed" plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where "Hometown" or "Imposed" plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works' request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding $10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) On-the-job training reports for Federal-aid highway construction projects pursuant to the training special provision (appendix B).

(1) State highway agencies are to require contractors subject to the training special provision to maintain records of training on each trainee. In addition, the contractor is to complete a semi-annual report (see appendix E, Form FHWA 1409, Federal-Aid Highway Construction Contractor's Semiannual Training Report) for each trainee receiving training under the special provision. The contractor is to submit reports for any training under the training special provision which is provided by any of his subcontractors. The contractor is to submit the semiannual reports by the 20th of each July and January. The original of the report will be furnished to the trainee and two copies forwarded to the State highway department. The State highway agency is to review the report for accuracy and completeness and transmit one copy of it to the FHWA division office.

(2) The State highway agencies are to complete a semi-annual report (see appendix F, Form FHWA 1410, Federal-Aid Highway Construction Semiannual Training Report) summarizing the individual training reports (Form FHWA 1409) submitted by the contractors. Three copies of the completed report are to be transmitted to the FHWA division office by the 30th of the month following the end of the reporting period.

(e) Reports on supportive services contracts. The State highway agency is to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978]

Appendices to Subpart A

Appendix A of Subpart A of Part 230—Special Provisions

SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to section 140 of title 23 U.S.C., as established by section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of $10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4,

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section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of $10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.* a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment. a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to

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do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. *Training and Promotion.* a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. *Unions.* If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special

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provisions, such contractor shall immediately notify the State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.* a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and nonminority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

Appendix B of Subpart A of Part 230—Training Special Provisions

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be ——— (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for

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training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

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APPENDIX C OF SUBPART A OF PART 230

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

OMB NO. 04-R2427

REPORT FOR JULY _____ 19 ____

FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT

1. CHECK APPROPRIATE BLOCK
☐ CONTRACTOR
☐ SUBCONTRACTOR

2. NAME AND ADDRESS OF FIRM

3. FEDERAL AID PROJECT NUMBER

4. TYPE OF CONSTRUCTION

5. COUNTY AND STATE

6. PERCENT COMPLETE

7. BEGINNING CONSTR. DATE

8. DOLLAR AMOUNT OF CONTRACT

9. ESTIMATED PEAK EMPLOYMENT

MONTH AND YEAR (a)	NUMBER OF EMPLOYEES (b)

10. EMPLOYMENT DATA

Table A

JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK Not of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS (Managers)														
SUPERVISORS														
FOREMEN/WOMEN														
CLERICAL														
EQUIPMENT OPERATORS														
MECHANICS														
TRUCK DRIVERS														
IRONWORKERS														
CARPENTERS														
CEMENT MASONS														
ELECTRICIANS														
PIPEFITTERS, PLUMBERS														
PAINTERS														
LABORERS, SEMI-SKILLED														
LABORERS, UNSKILLED														
TOTAL														

Table B

JOB CATEGORIES	APPRENTICES				ON THE JOB TRAINEES	
	M		F		M	F
APPRENTICES						
ON THE JOB TRAINEES						

Table C

11. PREPARED BY: *(Signature and Title of Contractors Representative)* DATE

12. REVIEWED BY: *(Signature and Title of State Highway Official)* DATE

This report is required by law and regulation (23 U.S.C. 140(a) and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.

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APPENDIX D OF SUBPART A OF PART 230

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

OMB NO. 04-R2427

FEDERAL-AID HIGHWAY CONSTRUCTION

SUMMARY OF EMPLOYMENT DATA (INCLUDING MINORITY BREAKDOWN) FOR ALL FEDERAL-AID HIGHWAY PROJECTS FOR MONTH ENCING JULY 31st, 19____

NOTE: See instructions on REVERSE

STATE-REGION (1-2)	NUMBER OF PROJECTS (9-12)	TOTAL DOLLAR VALUE (13-23)
01		

EMPLOYMENT DATA

Table A

JOB CATEGORIES	TOTAL EMPLOYEES				TOTAL MINORITIES		BLACK Not of Hispanic Origin		HISPANIC		AMERICAN INDIAN OR ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		APPRENTICES		ON THE JOB TRAINEES	
	M	F			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
	9-13	14-18	19-23	24-28	29-33	34-38	39-43	44-48	49-53	54-58	59-63	64-68	69-73	74-78	79-83	84-88	89-93	94-98		
02 OFFICIALS (MANAGERS)																				
03 SUPERVISORS																				
04 FOREMEN/WOMEN																				
05 CLERICAL																				
06 EQUIPMENT OPERATORS																				
07 MECHANICS																				
08 TRUCK DRIVERS																				
09 IRONWORKERS																				
10 CARPENTERS																				
11 CEMENT MASONS																				
12 ELECTRICIANS																				
13 PIPEFITTERS, PLUMBERS																				
14 PAINTERS																				
15 LABORERS, SEMI-SKILLED																				
16 LABORERS, UNSKILLED																				
17 TOTAL																				

Table B

18 APPRENTICES																				
19 ON THE JOB TRAINEES																				
PREPARED BY (*Signature & Title*)					DATE		REVIEWED BY (*Signature & Title of State Hwy. Official*)										DATE			

This report is required by law and regulation (23 U.S.C. 140(and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.

Form PR-1392
(Rev. 3-79)

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General Information and Instructions

This form is to be developed from the "Contractor's Annual EEO Report." This data is to be compiled by the State and submitted annually. It should reflect the total employment on all Federal-Aid Highway Projects in the State as of July 31st. The staffing figures to be reported should represent the project work force on board in all or any part of the last payroll period preceding the end of July. The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on-the-job trainees. Staffing figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for "Job Categories" are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be useful in complying with the U.S. Senate Committee on Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out section 22(A) of the Federal-Aid Highway Act of 1968. In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity.

It is requested that States submit this information annually to the FHWA Divisions no later than September 25.

Line 01—State & Region Code. Enter the 4-digit code from the list below.

Alabama	01-04	Montana	30-08
Alaska	02-10	Nebraska	31-07
Arizona	04-09	Nevada	32-09
Arkansas	05-06	New Hampshire	33-01
California	06-09	New Jersey	34-01
Colorado	08-08	New Mexico	35-06
Delaware	10-03	North Carolina	37-04
District of Columbia	11-03	North Dakota	38-08
Florida	12-04	Ohio	39-05
Georgia	13-04	Oklahoma	40-06
Hawaii	15-09	Oregon	41-10
Idaho	16-10	Pennsylvania	42-03
Illinois	17-05	Puerto Rico	43-01
Iowa	19-07	South Carolina	45-04
Kansas	20-07	South Dakota	46-08
Kentucky	21-04	Tennessee	47-04
Louisiana	22-06	Texas	48-06
Maine	23-01	Utah	49-08
Maryland	24-03	Vermont	50-01
Massachusetts	25-01	Virginia	51-03
Michigan	26-05	Washington	53-10
Minnesota	27-05	West Virginia	54-03
Mississippi	28-04	Wisconsin	55-05
Missouri	29-07	Wyoming	56-08

(23 U.S.C. sec. 140(a), 315, 49 CFR 1.48(b))

[44 FR 46832, Aug. 8, 1979. Correctly redesignated at 46 FR 21156, Apr. 9, 1981, and amended at 56 FR 4721, Feb. 6, 1991]

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APPENDIX E OF SUBPART A OF PART 230

FORM APPROVED
OMB NO. 04-R2434

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTOR'S SEMIANNUAL TRAINING REPORT	REPORTS CONTROL SYMBOL HHO-30-16 FEDERAL-AID PROJECT NO.

INSTRUCTIONS: This report is to be completed by the contractor semiannually for each individual employed on this contract *(including any subcontracts under it who has received training during the reporting period under the training special provision (attachment 2 FHPM 6-4-1.2))*. The report is to be submitted by the 20th of the month following the reporting period, *(July 20, and January 20)*. The original of this report is to be furnished to the trainee and two copies submitted to the State Highway Department.

1. NAME OF CONTRACTOR		1A. ADDRESS
2. NAME OF TRAINEE	2A. SEX ☐ M ☐ F	2B. ADDRESS

3. AGE OF TRAINEE	4. SOCIAL SECURITY NUMBER	5. EMPLOYEE STATUS *(CHECK ONE)* ☐ NEW HIRE ☐ UP-GRADE

6. ETHNIC GROUP DESIGNATION *(CHECK ONE)*

☐ NEGRO ☐ ORIENTAL ☐ AMERICAN INDIAN ☐ SPANISH AMERICAN ☐ OTHER

7. SUMMARY OF PREVIOUS TRAINING: *(ENTER AMOUNT AND TYPE OF TRAINING RECEIVED BY TRAINEE ON OTHER CONTRACTS UNDER APPROVED TRAINING PROGRAMS)*

8. JOB CLASSIFICATION OF TRAINEE	9. DATE TRAINING STARTED ON THIS CONTRACT	10. TYPE OF ON THE JOB TRAINING *(CHECK ONE)* ☐ APPRENTICESHIP ☐ OTHER

REPORTING PERIODS

INSTRUCTIONS: One vertical column is to be completed for each succeeding reporting period and the form submitted. Enter June 30, Dec. 30, as applicable in columns A thru H below.

		A	B	C	D	E	F	G	H
	HOURS OF TRAINING DATA	19 ___	19 ___	19 ___	19 ___	19 ___	19 ___	19 ___	19 ___
11.	PROVIDED DURING REPORT PERIOD								
	PROVIDED TO DATE								
13.	REMAINING TO COMPLETE THE APPROVED PROGRAM								

14. TERMINATION *(IF TRAINING WAS TERMINATED PRIOR TO COMPLETION OF APPROVED PROGRAM EXPLAIN REASON FOR TERMINATION)*

15. REPORT PREPARED BY *(SIGNATURE AND TITLE OF CONTRACTOR'S REPRESENTATIVE)*	16. DATE
16. REPORT REVIEWED BY *(SIGNATURE AND TITLE OF STATE HIGHWAY OFFICIAL)*	17. DATE

Form FHWA-1409
(Rev. 1-78)

PREVIOUS EDITIONS ARE OBSOLETE

[43 FR 19388, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

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FORM APPROVED
OMB NO. 04-R2434

FEDERAL - AID HIGHWAY CONSTRUCTION SEMIANNUAL TRAINING REPORT

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

REPORTS CONTROL SYMBOL HHO-30-16

NOTE: TO BE COMPLETED BY STATE HIGHWAY DEPARTMENT *(See instructions on reverse side)*

STATE (1-4) | PERIOD ENDING (5-7) | LEGEND: N-NEGRO; OR-ORIENTAL; O-OTHER; I-AMERICAN INDIAN; S-SPANISH AMERICAN

LINE NO.	TRAINING CLASSIFICATION A	NUMBER RECEIVING TRAINING DURING REPORT PERIOD B						NUMBER STARTING TRAINING DURING REPORT PERIOD C						NUMBER COMPLETING TRAINING DURING REPORT PERIOD D						TOTAL HOURS OF TRAINING DURING REPORT PERIOD E
8 9		TOTAL	N (10-12)	OR (13-15)	I (16-18)	S (19-21)	O (22-24)	TOTAL	N (25-27)	OR (28-30)	I (31-33)	S (34-36)	O (37-39)	TOTAL	N (40-42)	OR (43-45)	I (46-48)	S (49-51)	O (52-54)	(55-60) TOTAL
03	EQUIPMENT OPERATORS																			
04	MECHANICS																			
05	TRUCK DRIVERS																			
06	IRON WORKERS																			
07	CARPENTERS																			
08	CEMENT MASONS																			
09	ELECTRICIANS																			
10	PIPEFITTERS PLUMBERS																			
11	PAINTERS																			
12	OTHER SKILLS																			
13	TOTAL																			

14	NUMBER OF FEMALES RECEIVING TRAINING (10-12)	NUMBER OF FEMALES STARTING TRAINING (13-15)	NUMBER OF FEMALES COMPLETING TRAINING (16-18)
	NUMBER OF NEW-HIRES RECEIVING TRAINING (18-21)	NUMBER IN APPRENTICESHIP TRAINING (22-24)	NUMBER OF TERMINATIONS PRIOR TO COMPLETION OF TRAINING (23-27)
	NUMBER OF UP-GRADES RECEIVING TRAINING (28-30)	NUMBER IN OTHER ON-JOB-TRAINING (31-33)	NUMBER OF PROJECTS UNDER WAY DURING REPORTING PERIOD AND CONTAINING TRAINING SPECIAL PROVISIONS (34-36)

COMMENTS

REPORT PREPARED BY *(SIGNATURE)* AND TITLE OF STATE OFFICIAL | DATE

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[43 FR 19389, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

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APPENDIX G—SPECIAL REPORTING REQUIREMENTS FOR "HOMETOWN" OR "IMPOSED" PLAN AREAS

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR-1391 (appendix C to 23 CFR part 230) and in accordance with the instructions included thereon.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

AUTHORITY: 23 U.S.C. 101, 140(c), 304, 315; 49 CFR 1.48(b).

SOURCE: 50 FR 51243, Dec. 16, 1985, unless otherwise noted.

§ 230.201 Purpose.

To prescribe the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

§ 230.202 Definitions.

(a) *Minority Business Enterprise,* as used in this subpart, refers to all small businesses which participate in the Federal-aid highway program as a minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE), all defined under 49 CFR part 23. This expanded definition is used only in this subpart as a simplified way of defining the firms eligible to benefit from this supportive services program.

(b) *Supportive Services* means those services and activities provided in connection with minority business enterprise programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts.

(c) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* is considered equivalent to *State highway agency* if the context so implies.

§ 230.203 Policy.

Based on the provisions of Pub. L. 97-424, dated January 6, 1983, it is the policy of the Federal Highway Administration (FHWA) to promote increased participation of minority business enterprises in Federal-aid highway contracts in part through the development and implementation of cost effective supportive services programs through the State highway agencies.

§ 230.204 Implementation of supportive services.

(a) Subject to the availability of funds under 23 U.S.C. 140(c), the State highway agency shall establish procedures to develop, conduct, and administer minority business enterprise training and assistance programs specifically for the benefit of women and minority businesses. Supportive services funds allocated to the States shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section. Individual States are encouraged to be actively involved in the provision of supportive services. Such involvement can take the form of staff, funding, and/or direct assistance to augment the supportive services efforts financed by Federal-aid funds.

(b) State highway agencies shall give preference to the following types of services:

(1) Services relating to identification, prequalification, and certification assistance, with emphasis on increasing the total number of legitimate minority business enterprises participating in the Federal-aid highway program;

(2) Services in connection with estimating, bidding, and technical assistance designed to develop and improve the capabilities of minority businesses

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and assist them in achieving proficiency in the technical skills involved in highway construction;

(3) Services designed to develop and improve the immediate and long-term business management, recordkeeping, and financial accounting capabilities;

(4) Services to assist minority business enterprises to become eligible for and to obtain bonding and financial assistance;

(5) Services relating to verification procedures to ensure that only *bona fide* minority business enterprises are certified as eligible for participation in the Federal-aid highway program;

(6) Follow-up services to ascertain the outcome of training and assistance being provided; and

(7) Other services which contribute to long-term development, increased opportunities, and eventual self-sufficiency of minority business enterprises.

(c) A detailed work statement of the supportive services which the State highway agency considers to meet the guidance under this regulation and a program plan for meeting the requirements of paragraph (b) of this section and accomplishing other objectives shall be submitted to the FHWA for approval.

(d) State highway agencies which desire to provide or obtain services other than those listed in paragraph (b) of this section shall submit their proposals to the FHWA for approval.

(e) When the State highway agency provides supportive services by contract, formal advertising is not required by FHWA; however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with majority and minority contractors, contractors' associations, minority groups, and other persons or organizations whose cooperation and assistance will increase the opportunities for minority business enterprises to compete for and perform contracts and subcontracts.

(f) In the selection of contractors to perform supportive services, State highway agencies shall make conscientious efforts to search out, and utilize the services of qualified minority or women organizations, or minority or women enterprises.

(g) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the total number of minority firms participating in the Federal-aid highway program and to contribute to the growth and eventual self-sufficiency of minority firms;

(2) A statement that supportive services shall be provided only to those minority business enterprises determined to be eligible for participation in the Federal-aid highway program in accordance with 49 CFR part 23 and have a work specialty related to the highway construction industry;

(3) A clear and complete statement of the services to be provided under the contract, such as technical assistance, managerial assistance, counseling, certification assistance, and follow-up procedures as set forth in § 230.204(b) of this part;

(4) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in Form FHWA-1273, Required Contract Provisions, Federal-Aid Construction Contracts,[1] and a statement of nondiscrimination in employment because of race, color, religion, sex, or national origin;

(5) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(6) Monthly or quarterly reports to the State highway agency containing sufficient data and narrative content to enable evaluation of both progress and problems;

(7) The basis of payment;

(8) An estimated schedule for expenditures;

[1] Form FHWA-1273 is available for inspection and copying at the locations given in 49 CFR part 7, appendix D, under Document Inspection Facilities, and at all State highway agencies.

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(9) The right of access to records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract; and

(12) A termination clause.

(h) The State highway agency is to furnish copies of the reports received under paragraph(g)(6) of this section to the FHWA division office.

[50 FR 51243, Dec. 16, 1985, as amended at 52 FR 36922, Oct. 2, 1987]

§ 230.205 Supportive services funds obligation.

Supportive services funds shall be obligated in accordance with the procedures set forth in § 230.117(b) of this part. The point of obligation is defined as that time when the FHWA has approved a detailed work statement for the supportive services.

§ 230.206 Monitoring supportive services.

Supportive services programs shall be continually monitored and evaluated by the State highway agency so that needed improvements can be identified and instituted. This requires the documentation of valid effectiveness measures by which the results of program efforts may be accurately assessed.

§ 230.207 Sources of assistance.

It is the policy of the FHWA that all potential sources of assistance to minority business enterprises be utilized. The State highway agency shall take actions to ensure that supportive services contracts reflect the availability of all sources of assistance in order to maximize resource utilization and avoid unnecessary duplication.

Subpart C—State Highway Agency Equal Employment Opportunity Programs

AUTHORITY: 23 U.S.C. 140(a), 315; E.O. 11246; 41 CFR 60-1; 49 CFR 1.48.

SOURCE: 41 FR 28270, July 9, 1976, unless otherwise noted.

§ 230.301 Purpose.

The purpose of the regulations in this subpart is to set forth Federal Highway Administration (FHWA) Federal-aid policy and FHWA and State responsibilities relative to a State highway agency's internal equal employment opportunity program and for assuring compliance with the equal employment opportunity requirements of federally-assisted highway construction contracts.

§ 230.303 Applicability.

The provisions of this subpart are applicable to all States that receive Federal financial assistance in connection with the Federal-aid highway program.

§ 230.305 Definitions.

As used in this subpart, the following definitions apply:

(a) *Affirmative Action Plan* means:

(1) With regard to State highway agency work forces, a written document detailing the positive action steps the State highway agency will take to assure internal equal employment opportunity (internal plan).

(2) With regard to Federal-aid construction contract work forces, the Federal equal employment opportunity bid conditions, to be enforced by a State highway agency in the plan areas established by the Secretary of Labor and FHWA special provisions in nonplan areas (external plan).

(b) *Equal employment opportunity program* means the total State highway agency program, including the affirmative action plans, for ensuring compliance with Federal requirements both in State highway agency internal employment and in employment on Federal-aid construction projects.

(c) *Minority groups.* An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging. As defined by U.S. Federal agencies for employment purposes, minority group persons in the U.S. are identified as Blacks (not of Hispanic origin), Hispanics, Asian or Pacific Islanders, and American Indians or Alaskan Natives.

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(d) *Racial/ethnic identification.* For the purpose of this regulation and any accompanying report requirements, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one racial/ethnic category. The following group categories will be used:

(1) The category *White (not of Hispanic origin)*: All persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian Subcontinent.

(2) The category *Black (not of Hispanic origin)*: All persons having origins in any of the Black racial groups.

(3) The category *Hispanic*: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(4) The category *Asian or Pacific Islanders*: All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(5) The category *American Indian or Alaskan Native*: All persons having origins in any of the original peoples of North America.

(e) *State* means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(f) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency* if the context so implies.

[41 FR 28270, July 9, 1976, as amended at 41 FR 46293, Oct. 20, 1976]

§ 230.307 Policy.

Every employee and representative of State highway agencies shall perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable statutes, executive orders, regulations, and policies enunciated thereunder, to assure the equality of employment opportunity, without regard to race, color, religion, sex, or national origin both in its own work force and in the work forces of contractors, subcontractors, and material suppliers engaged in the performance of Federal-aid highway construction contracts.

§ 230.309 Program format.

It is essential that a standardized Federal approach be taken in assisting the States in development and implementation of EEO programs. The format set forth in appendix A provides that standardized approach. State equal employment opportunity programs that meet or exceed the prescribed standards will comply with basic FHWA requirements.

§ 230.311 State responsibilities.

(a) Each State highway agency shall prepare and submit an updated equal employment opportunity program, one year from the date of approval of the preceding program by the Federal Highway Administrator, over the signature of the head of the State highway agency, to the Federal Highway Administrator through the FHWA Division Administrator. The program shall consist of the following elements:

(1) The collection and analysis of internal employment data for its entire work force in the manner prescribed in part II, paragraph III of appendix A; and

(2) The equal employment opportunity program, including the internal affirmative action plan, in the format and manner set forth in appendix A.

(b) In preparation of the program required by § 230.311(a), the State highway agency shall consider and respond to written comments from FHWA regarding the preceding program.

§ 230.313 Approval procedure.

After reviewing the State highway agency equal employment opportunity program and the summary analysis and recommendations from the FHWA regional office, the Washington Headquarters Office of Civil Rights staff will recommend approval or disapproval of the program to the Federal Highway Administrator. The

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State highway agency will be advised of the Administrator's decision. Each program approval is effective for a period of one year from date of approval.

APPENDIX A TO SUBPART C—STATE HIGHWAY AGENCY EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Each State highway agency's (SHA) equal employment opportunity (EEO) program shall be in the format set forth herein and shall address Contractor Compliance (part I) and SHA Internal Employment (part II), including the organizational structure of the SHA total EEO Program (internal and external).

PART I—CONTRACTOR COMPLIANCE

I. *Organization and structure.* A. *State highway agency EEO Coordinator (External) and staff support.* 1. Describe the organizational location and responsibilities of the State highway agency EEO Coordinator. (Provided organization charts of the State highway agency and of the EEO staff.)

2. Indicate whether full or part-time; if part-time, indicate percentage of time devoted to EEO.

3. Indicate length of time in position, civil rights experience and training, and supervision.

4. Indicate whether compliance program is centralized or decentralized.

5. Identify EEO Coordinator's staff support (full- and part-time) by job title and indicate areas of their responsibilities.

6. Identify any other individuals in the central office having a responsibility for the implementation of this program and describe their respective roles and training received in program area.

B. *District or division personnel.* 1. Describe the responsibilities and duties of any district EEO personnel. Identify to whom they report.

2. Explain whether district EEO personnel are full-time or have other responsibilities such as labor compliance or engineering.

3. Describe training provided for personnel having EEO compliance responsibility.

C. *Project personnel.* Describe the EEO role of project personnel.

II. *Compliance procedures.* A. *Applicable directives.* 1. FHWA Contract Compliance Procedures.

2. EEO Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 2, Attachment 1)[1]

3. Training Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 2, Attachment 2)[1]

4. FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 6 (Contract Procedures), and subsec. 8 (Minority Business Enterprise).[1]

B. *Implementation.* 1. Describe process (methods) of incorporating the above FHWA directives into the SHA compliance program.

2. Describe the methods used by the State to familiarize State compliance personnel with all FHWA contract compliance directives. Indicate frequency of work shops, training sessions, etc.

3. Describe the procedure for advising the contractor of the EEO contract requirements at any preconstruction conference held in connection with a Federal-aid contract.

III. *Accomplishments.* Describe accomplishments in the construction EEO compliance program during the past fiscal year.

A. *Regular project compliance review program.* This number should include at least all of the following items:

1. Number of compliance reviews conducted.

2. Number of contractors reviewed.

3. Number of contractors found in compliance.

4. Number of contractors found in noncompliance.

5. Number of show cause notices issued.

6. Number of show cause notices rescinded.

7. Number of show cause actions still under conciliation and unresolved.

8. Number of followup reviews conducted.

(NOTE: In addition to information requested in items 4-8 above, include a brief summary of total show cause and followup activities—findings and achievements.)

B. *Consolidated compliance reviews.* 1. Identify the target areas that have been reviewed since the inception of the consolidated compliance program. Briefly summarize total findings.

2. Identify any significant impact or effect of this program on contractor compliance.

C. *Home office reviews.* If the State conducts home office reviews, describe briefly the procedures followed by State.

D. *Major problems encountered.* Describe major problems encountered in connection with any review activities during the past fiscal year.

E. *Major breakthroughs.* Comment briefly on any major breakthrough or other accom-

[1]The Federal-Aid Highway Program Manual is available for inspection and copying at the Federal Highway Administration (FHWA), 400 7th St., SW., Washington, DC 20590, or at FHWA offices listed in 49 CFR part 7, appendix D.

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plishment significant to the compliance review program.

IV. *Areawide plans/Hometown and Imposed (if applicable).* A. Provide overall analysis of the effectiveness of each areawide plan in the State.

B. Indicate by job titles the number of State personnel involved in the collection, consolidation, preparation, copying, reviewing, analysis, and transmittal of area plan reports (Contracting Activity and Post Contract Implementation). Estimate the amount of time (number of hours) spent collectively on this activity each month. How does the State use the plan report data?

C. Identify Office of Federal Contract Compliance Programs (OFCCP) area plan audits or compliance checks in which State personnel participated during the last fiscal year. On the average, how many hours have been spent on these audits and/or checks during the past fiscal year?

D. Describe the working relationship of State EEO compliance personnel with representatives of plan administrative committee(s).

E. Provide recommendations for improving the areawide plan program and the reporting system.

V. *Contract sanctions.* A. Describe the procedures used by the State to impose contract sanctions or institute legal proceedings.

B. Indicate the State or Federal laws which are applicable.

C. Does the State withhold a contractor's progress payments for failure to comply with EEO requirements? If so, identify contractors involved in such actions during the past fiscal year. If not, identify other actions taken.

VI. *Complaints.* A. Describe the State's procedures for handling discrimination complaints against contractors.

B. If complaints are referred to a State fair employment agency or similar agency, describe the referral procedure.

C. Identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide current status.

VII. *External training programs, including supportive services.* A. Describe the State's process for reviewing the work classifications of trainees to determine that there is a proper and reasonable distribution among appropriate craft.

B. Describe the State's procedures for identifying the number of minorities and women who have completed training programs.

C. Describe the extent of participation by women in construction training programs.

D. Describe the efforts made by the State to locate and use the services of qualified minority and female supportive service consultants. Indicate if the State's supportive service contractor is a minority or female owned enterprise.

E. Describe the extent to which reports from the supportive service contractors provide sufficient data to evaluate the status of training programs, with particular reference to minorities and women.

VIII. *Minority business enterprise program.* FHPM 6-4-1-8 sets forth the FHWA policy regarding the minority business enterprise program. The implementation of this program should be explained by responding to the following:

A. Describe the method used for listing of minority contractors capable of, or interested in, highway construction contracting or subcontracting. Describe the process used to circulate names of appropriate minority firms and associations to contractors obtaining contract proposals.

B. Describe the State's procedure for insuring that contractors take action to affirmatively solicit the interest, capability, and prices of potential minority subcontractors.

C. Describe the State's procedure for insuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the State provides to liaison officers.

D. Describe the action the State has taken to meet its goals for prequalification or licensing of minority business. Include dollar goals established for the year, and describe what criteria or formula the State has adopted for setting such goals. If it is different from the previous year, describe in detail.

E. Outline the State's procedure for evaluating its prequalification/licensing requirements.

F. Identify instances where the State has waived prequalification for subcontractors on Federal-aid construction work or for prime contractors on Federal-aid contracts with an estimated dollar value lower than $100,000.

G. Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts.

IX. *Liaison.* Describe the liaison established by the State between public (State, county, and municpal) agencies and private organizations involved in EEO programs. How is the liaison maintained on a continuing basis?

X. *Innovative programs.* Identify any innovative EEO programs or management procedures initiated by the State and not previously covered.

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PART II—STATE HIGHWAY AGENCY EMPLOYMENT

I. *General.* The State highway agency's (SHA) internal program is an integral part of the agency's total activities. It should include the involvement, commitment and support of executives, managers, supervisors and all other employees. For effective administration and implementation of the EEO Program, an affirmative action plan (AAP) is required. The scope of an EEO program and an AAP must be comprehensive, covering all elements of the agency's personnel management policies and practices. The major part of an AAP must be recognition and removal of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis. An effective AAP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has overlooked, screened out or underutilized the great reservoir of untapped human resources and skills, especially among women and minority groups.

Set forth are general guidelines designed to assist the State highway agencies in implementing internal programs, including the development and implementation of AAP's to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin in all employment practices.

II. *Administration and implementation.* The head of each State highway agency is responsible for the overall administration of the internal EEO program, including the total integration of equal opportunity into all facets of personnel management. However, specific program responsibilities should be assigned for carrying out the program at all management levels.

To ensure effectiveness in the implementation of the internal EEO program, a specific and realistic AAP should be developed. It should include both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress, according to the agency's individual need to overcome existing problems.

A. *State Highway Agency Affirmative Action Officer (internal).* 1. *Appointment of Affirmative Action Officer.* The head of the SHA should appoint a qualified Affirmative Action (AA) Officer (Internal EEO Officer) with responsibility and authority to implement the internal EEO program. In making the selection, the following factors should be considered:

a. The person appointed should have proven ability to accomplish major program goals.

b. Managing the internal EEO program requires a major time commitment; it cannot be added on to an existing full-time job.

c. Appointing qualified minority and/or female employees to head or staff the program may offer good role models for present and potential employees and add credibility to the programs involved. However, the most essential requirements for such position(s) are sensitivity to varied ways in which discrimination limits job opportunities, commitment to program goals and sufficient status and ability to work with others in the agency to achieve them.

2. *Responsibilities of the Affirmative Action Officer.* The responsibilities of the AA Officer should include, but not necessarily be limited to:

a. Developing the written AAP.

b. Publicizing its content internally and externally.

c. Assisting managers and supervisors in collecting and analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to achieve goals. Programs should include specific remedies to eliminate any discriminatory practices discovered in the employment system.

d. Handling and processing formal discrimination complaints.

e. Designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed.

f. Reporting, at least quarterly, to the head of the SHA on progress and deficiencies of each unit in relation to agency goals.

g. In addition, consider the creation of:

(1) An EEO Advisory Committee, whose membership would include top management officials,

(2) An EEO Employee Committee, whose membership would include rank and file employees, with minority and female representatives from various job levels and departments to meet regularly with the AA officer, and

(3) An EEO Counseling Program to attempt informal resolution of discrimination complaints.

B. *Contents of an affirmative action plan.* The Affirmative Action Plan (AAP) is an integral part of the SHA's EEO program. Although the style and format of AAP's may vary from one SHA to another, the basic substance will generally be the same. The essence of the AAP should include, but not necessarily be limited to:

1. Inclusion of a strong agency policy statement of commitment to EEO.

2. Assignment of responsibility and authority for program to a qualified individual.

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3. A survey of the labor market area in terms of population makeup, skills, and availability for employment.

4. Analyzing the present work force to identify jobs, departments and units where minorities and females are underutilized.

5. Setting specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.

6. Making every manager and supervisor responsible and accountable for meeting these goals.

7. Reevaluating job descriptions and hiring criteria to assure that they reflect actual job needs.

8. Finding minorities and females who are qualified or qualifiable to fill jobs.

9. Getting minorities and females into upward mobility and relevant training programs where they have not had previous access.

10. Developing systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, determine the reasons and make necessary changes.

11. Developing a procedure whereby employees and applicants may process allegations of discrimination to an impartial body without fear of reprisal.

C. *Implementation of an affirmative action plan.* The written AAP is the framework and management tool to be used at all organizational levels to actively implement, measure and evaluate program progress on the specific action items which represent EEO program problems or deficiencies. The presence of a written plan alone does not constitute an EEO program, nor is it, in itself, evidence of an ongoing program. As a minimum, the following specific actions should be taken.

1. *Issue written equal employment opportunity policy statement and affirmative action commitment.* To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA (1) should issue a firm statement of personal commitment, legal obligation and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager and supervisor.

The statement should include, but not necessarily be limited to, the following elements:

a. EEO for all persons, regardless of race, color, religion, sex or national origin as a fundamental agency policy.

b. Personal commitment to and support of EEO by the head of the SHA.

c. The requirement that special affirmative action be taken throughout the agency to overcome the effects of past discrimination.

d. The requirement that the EEO program be a goal setting program with measurement and evaluation factors similar to other major agency programs.

e. Equal opportunity in all employment practices, including (but not limited to) recruiting, hiring, transfers, promotions, training, compensation, benefits, recognition (awards), layoffs, and other terminations.

f. Responsibility for positive affirmative action in the discharge of EEO programs, including performance evaluations of managers and supervisors in such functions, will be expected of and shared by all management personnel.

g. Accountability for action or inaction in the area of EEO by management personnel.

2. *Publicize the affirmative action plan.* a. *Internally:* (1) Distribute written communications from the head of the SHA.

(2) Include the AAP and the EEO policy statement in agency operations manual.

(3) Hold individual meetings with managers and supervisors to discuss the program, their individual responsibilities and to review progress.

(4) Place Federal and State EEO posters on bulletin boards, near time clocks and in personnel offices.

(5) Publicize the AAP in the agency newsletters and other publications.

(6) Present and discuss the AAP as a part of employee orientation and all training programs.

(7) Invite employee organization representatives to cooperate and assist in developing and implementing the AAP.

b. *Externally:* Distribute the AAP to minority groups and women's organizations, community action groups, appropriate State agencies, professional organizations, etc.

3. *Develop and implement specific programs to eliminate discriminatory barriers and achieve goals.* a. *Job structuring and upward mobility:* The AAP should include specific provisions for:

(1) Periodic classification plan reviews to correct inaccurate position descriptions and to ensure that positions are allocated to the appropriate classification.

(2) Plans to ensure that all qualification requirements are closely job related.

(3) Efforts to restructure jobs and establish entry level and trainee positions to facilitate progression within occupational areas.

(4) Career counseling and guidance to employees.

(5) Creating career development plans for lower grade employees who are underutilized or who demonstrate potential for advancement.

(6) Widely publicizing upward mobility programs and opportunities within each work unit and within the total organizational structure.

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b. *Recruitment and placement.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Active recruitment efforts to support and supplement those of the central personnel agency or department, reaching all appropriate sources to obtain qualified employees on a nondiscriminatory basis.

(2) Maintaining contracts with organizations representing minority groups, women, professional societies, and other sources of candidates for technical, professional and management level positions.

(3) Ensuring that recruitment literature is relevant to all employees, including minority groups and women.

(4) Reviewing and monitoring recruitment and placement procedures so as to assure that no discriminatory practices exist.

(5) Cooperating with management and the central personnel agency on the review and validation of written tests and other selection devices.

(6) Analyzing the flow of applicants through the selection and appointment process, including an analytical review of reasons for rejections.

(7) Monitoring the placement of employees to ensure the assignment of work and workplace on a nondiscriminatory basis.

c. *Promotions.* The AAP should include specific provisions for, but not necessarily limited to:

1. Establishing an agency-wide merit promotion program, including a merit promotion plan, to provide equal opportunity for all persons based on merit and without regard to race, color, religion, sex or national origin.

2. Monitoring the operation of the merit promotion program, including a review of promotion actions, to assure that requirements procedures and practices support EEO program objectives and do not have a discriminatory impact in actual operation.

3. Establishing skills banks to match employee skills with available job advancement opportunities.

4. Evaluating promotion criteria (supervisory evaluations, oral interviews, written tests, qualification standards, etc.) and their use by selecting officials to identify and eliminate factors which may lead to improper "selection out" of employees or applicants, particularly minorities and women, who traditionally have not had access to better jobs. It may be appropriate to require selecting officials to submit a written justification when well qualified persons are passed over for upgrading or promotion.

5. Assuring that all job vacancies are posted conspicuously and that all employees are encouraged to bid on all jobs for which they feel they are qualified.

6. Publicizing the agency merit promotion program by highlighting breakthrough promotions, i.e. advancement of minorities and women to key jobs, new career heights, etc.

d. *Training.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Requiring managers and supervisors to participate in EEO seminars covering the AAP, the overall EEO program and the administration of the policies and procedures incorporated therein, and on Federal, State and local laws relating to EEO.

(2) Training in proper interviewing techniques of employees who conduct employment selection interviews.

(3) Training and education programs designed to provide opportunities for employees to advance in relation to the present and projected manpower needs of the agency and the employees' career goals.

(4) The review of profiles of training course participants to ensure that training opportunities are being offered to all eligible employees on an equal basis and to correct any inequities discovered.

e. *Layoffs, recalls, discharges, demotions, and disciplinary actions.* The standards for deciding when a person shall be terminated, demoted, disciplined, laid off or recalled should be the same for all employees, including minorities and females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups. For example, if more minorities and females are being laid off because they were the last hired, then, adjustments should be made to assure that the minority and female ratios do not decrease because of these actions.

(1) When employees, particularly minorities and females, are disciplined, laid off, discharged or downgraded, it is advisable that the actions be reviewed by the AA Officer before they become final.

(2) Any punitive action (i.e. harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.

(3) The following records should be kept to monitor this area of the internal EEO program:

On all terminations, including layoffs and discharges: indicate total number, name, (home address and phone number), employment date, termination date, recall rights, sex, racial/ethnic identification (by job category), type of termination and reason for termination.

On all demotions: indicate total number, name, (home address and phone number), demotion date, sex, racial/ethnic identification (by job category), and reason for demotion.

On all recalls: indicate total number, name, (home address and phone number) recall date, sex, and racial/ethnic identification (by job category).

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Exit interviews should be conducted with employees who leave the employment of the SHA.

f. *Other personnel actions.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Assuring that information on EEO counseling and grievance procedures is easily available to all employees.

(2) A system for processing complaints alleging discrimination because of race, color, religion, sex or national origin to an impartial body.

(3) A system for processing grievances and appeals (i.e. disciplinary actions, adverse actions, adverse action appeals, etc).

(4) Including in the performance appraisal system a factor to rate manager's and supervisors' performance in discharging the EEO program responsibilities assigned to them.

(5) Reviewing and monitoring the performance appraisal program periodically to determine its objectivity and effectiveness.

(6) Ensuring the equal availability of employee benefits to all employees.

4. *Program evaluation.* An internal reporting system to continually audit, monitor and evaluate programs is essential for a successful AAP. Therefore, a system providing for EEO goals, timetables, and periodic evaluations needs to be established and implemented. Consideration should be given to the following actions:

a. Defining the major objectives of EEO program evaluation.

b. The evaluation should be directed toward results accomplished, not only at efforts made.

c. The evaluation should focus attention on assessing the adequacy of problem identification in the AAP and the extent to which the specific action steps in the plan provide solutions.

d. The AAP should be reviewed and evaluated at least annually. The review and evaluation procedures should include, but not be limited to, the following:

(1) Each bureau, division or other major component of the agency should make annual and such other periodic reports as are needed to provide an accurate review of the operations of the AAP in that component.

(2) The AA Officer should make an annual report to the head of the SHA, containing the overall status of the program, results achieved toward established objectives, identity of any particular problems encountered and recommendations for corrective actions needed.

e. Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each job category.

III. *Employment statistical data.* A. As a minimum, furnish the most recent data on the following:

1. The total population in the State,

2. The total labor market in State, with a breakdown by racial/ethnic identification and sex, and

3. An analysis of (1) and (2) above, in connection with the availability of personnel and jobs within SHA's.

B. State highway agencies shall use the EEO-4 Form in providing current work force data. This data shall reflect only State department of transportation/State highway department employment.

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D. EMPLOYMENT DATA AS OF JUNE 30
(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL TIME EMPLOYEES (Temporary employees not included)

JOB CATEGORIES		ANNUAL SALARY (In Thousands 000)	TOTAL (COLUMNS B-K) A	MALE					FEMALE				
				NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
				WHITE B	BLACK C	D	E	F	WHITE G	BLACK H	I	J	K
OFFICIALS/ ADMINISTRATORS	1.	$ 0.1-3.9											
	2.	4.0-5.9											
	3	6.0 7.9											
	4.	8.0-9.9											
	5	10.0-12.9											
	6	13.0 15.9											
	7.	16 0-24 9											
	8.	25 0 PLUS											
PROFESSIONALS	9	0.1-3.9											
	10	4 0 5.9											
	11.	6 0-7.9											
	12.	8.0-9.9											
	13.	10.0-12.9											
	14.	13.0 15 9											
	15	16 0-24.9											
	16.	25.0 PLUS											
TECHNICIANS	17.	0 1-3 9											
	18.	4.0-5 9											
	19.	6 0-7 9											
	20.	8.0 9.9											
	21.	10.0-12 9											
	22	13 0-15.9											
	23	16 0-24 9											
	24	25.0 PLUS											
PROTECTIVE SERVICE	25	0 1-3 9											
	26	4 0 5.9											
	27	6 0-7.9											
	28	8 0 9.9											
	29	10.0-12.9											
	30	13 0-15 9											
	31	16 0-24.9											
	32.	25.0 PLUS											
PARA-PROFESSIONALS	33	0.1-3 9											
	34	4 0-5.9											
	35	6 0-7.9											
	36.	8.0-9.9											
	37.	10 0-12 9											
	38.	13.0-15 9											
	39.	16 0-24 9											
	40.	25.0 PLUS											
OFFICE/ CLERICAL	41.	0.1-3.9											
	42.	4.0-5.9											
	43.	6.0-7.9											
	44	8.0-9.9											
	45.	10.0-12.9											
	46.	13.0-15.9											
	47.	16.0-24.9											
	48.	$ 25.0 PLUS											

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D. EMPLOYMENT DATA AS OF JUNE 30 (Cont.)
(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL TIME EMPLOYEES (Temporary employees not included)

JOB CATEGORIES	ANNUAL SALARY (in thousands 000)	TOTAL (COLUMNS B-K) A	MALE					FEMALE				
			NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
			WHITE B	BLACK C	D	E	F	WHITE G	BLACK H	I	J	K
SKILLED CRAFT	49. $ 0.1-3.9											
	50 4.0-5.9											
	51. 6.0-7.9											
	52. 8.0-9.9											
	53. 10.0-12.9											
	54. 13.0-15.9											
	55 16.0-24.9											
	56. 25.0 PLUS											
SERVICE/ MAINTENANCE	57. 0.1-3.9											
	58. 4.0-5.9											
	59. 6.0-7.9											
	60. 8.0-9.9											
	61. 10.0-12.9											
	62. 13.0-15.9											
	63. 16.0-24.9											
	64. $ 25.0 PLUS											
65. TOTAL FULL TIME (LINES 1-64)												

2. OTHER THAN FULL TIME EMPLOYEES (Include temporary employees)

66. OFFICIALS / ADMIN.											
67. PROFESSIONALS											
68. TECHNICIANS											
69. PROTECTIVE SERV.											
70. PARA-PROFESSIONAL											
71. OFFICE / CLERICAL											
72. SKILLED CRAFT											
73. SERV. / MAINT.											
74. TOTAL OTHER THAN FULL TIME (LINES 66-73)											

3. NEW HIRES DURING FISCAL YEAR Permonent full time only
JULY 1 - JUNE 30

75. OFFICIALS / ADMIN.											
76. PROFESSIONALS											
77. TECHNICIANS											
78. PROTECTIVE SERV.											
79. PARA-PROFESSIONAL											
80. OFFICE / CLERICAL											
81. SKILLED CRAFT											
82. SERV. / MAINT.											
83. TOTAL NEW HIRES (LINES 75-82)											

[41 FR 28270, July 9, 1976, as amended at 41 FR 46294, Oct. 20, 1976]

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Subpart D—Construction Contract Equal Opportunity Compliance Procedures

AUTHORITY: 23 U.S.C. 140(a), 315; E.O. 11246; 41 CFR 60-1; 49 CFR 1.48.

SOURCE: 41 FR 34239, Aug. 13, 1976, unless otherwise noted.

§ 230.401 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans.

§ 230.403 Applicability.

The procedures set forth hereinafter apply to all nonexempt direct Federal and Federal-aid highway construction contracts and subcontracts, unless otherwise specified.

§ 230.405 Administrative responsibilities.

(a) *Federal Highway Administration (FHWA) responsibilities.* (1) The FHWA has the responsibility to ensure that contractors meet contractural equal opportunity requirements under E.O. 11246, as amended, and title 23 U.S.C., and to provide guidance and direction to States in the development and implementation of a program to assure compliance with equal opportunity requirements.

(2) The Federal Highway Administrator or a designee may inquire into the status of any matter affecting the FHWA equal opportunity program and, when considered necessary, assume jurisdiction over the matter, proceeding in coordination with the State concerned. This is without derogation of the authority of the Secretary of Transportation, Department of Transportation (DOT), the Director, DOT Departmental Office of Civil Rights (OCR) or the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor.

(3) Failure of the State highway agency (SHA) to discharge the responsibilities stated in § 230.405(b)(1) may result in DOT's taking any or all of the following actions (see appendix A to 23 CFR part 630, subpart C "Federal-aid project agreement"):

(i) Cancel, terminate, or suspend the Federal-aid project agreement in whole or in part;

(ii) Refrain from extending any further assistance to the SHA under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the SHA; and

(iii) Refer the case to an appropriate Federal agency for legal proceedings.

(4) Action by the DOT, with respect to noncompliant contractors, shall not relieve a SHA of its responsibilities in connection with these same matters; nor is such action by DOT a substitute for corrective action utilized by a State under applicable State laws or regulations.

(b) *State responsibilities.* (1) The SHA's, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

(2) The corrective action procedures outlined herein do not preclude normal contract administration procedures by the States to ensure the contractor's completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by noncompliance with equal opportunity contract requirements.

§ 230.407 Definitions.

For the purpose of this subpart, the following definitions shall apply, unless the context requires otherwise:

(a) *Actions,* identified by letter and number, shall refer to those items identified in the process flow chart. (Appendix D);

(b) *Affirmative Action Plan* means a written positive management tool of a

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total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure equal opportunity program progress and effectiveness. (The Special Provisions [23 CFR part 230 A, appendix A] and areawide plans are Affirmative Action Plans.);

(c) *Affirmative Actions* means the efforts exerted towards achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment. These measures include, but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training;

(d) *Areawide Plan* means an Affirmative Action Plan approved by the Department of Labor to increase minority and female utilization in crafts of the construction industry in a specified geographical area pursuant to E.O. 11246, as amended, and taking the form of either a "Hometown" or an "Imposed" Plan.

(1) *Hometown Plan* means a voluntary areawide agreement usually developed by representatives of labor unions, minority organizations, and contractors, and approved by the OFCCP for the purpose of implementing the equal employment opportunity requirements pursuant to E.O. 11246, as amended;

(2) *Imposed Plan* means mandatory affirmative action requirements for a specified geographical area issued by OFCCP and, in some areas, by the courts;

(e) *Compliance Specialist* means a Federal or State employee regularly employed and experienced in civil rights policies, practices, procedures, and equal opportunity compliance review and evaluation functions;

(f) *Consolidated Compliance Review* means a review and evaluation of all significant construction employment in a specific geographical (target) area;

(g) *Construction* shall have the meanings set forth in 41 CFR 60-1.3(e) and 23 U.S.C. 101(a). References in both definitions to expenses or functions incidental to construction shall include preliminary engineering work in project development or engineering services performed by or for a SHA;

(h) *Corrective Action Plan* means a contractor's unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment.);

(i) *Contractor* means, any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier;

(j) *Days* shall mean calendar days;

(k) *Discrimination* means a distinction in treatment based on race, color, religion, sex, or national origin;

(l) *Equal Employment Opportunity* means the absence of partiallty or distinction in employment treatment, so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained;

(m) *Equal Opportunity Compliance Review* means an evaluation and determination of a nonexempt direct Federal or Federal-aid contractor's or subcontractor's compliance with equal opportunity requirements based on:

(1) Project work force—employees at the physical location of the construction activity;

(2) Area work force—employees at all Federal-aid, Federal, and non-Federal projects in a specific geographical area as determined under § 230.409 (b)(9); or

(3) Home office work force—employees at the physical location of the corporate, company, or other ownership headquarters or regional managerial, offices, including "white collar" personnel (managers, professionals, technicians, and clericals) and any maintenance or service personnel connected thereto;

(n) *Equal Opportunity Requirements* is a general term used throughout this document to mean all contract provisions relative to equal employment opportunity (EEO), subcontracting, and training;

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(o) *Good Faith Effort* means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan;

(p) *Show Cause Notice* means a written notification to a contractor based on the determination of the reviewer (or in appropriate cases by higher level authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed;

(q) *State highway agency* (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency.* With regard to direct Federal contracts, references herein to SHA's shall be considered to refer to FHWA regional offices, as appropriate.

§ 230.409 Contract compliance review procedures.

(a) *General.* A compliance review consists of the following elements:

(1) Review Scheduling (Actions R-1 and R-2).

(2) Contractor Notification (Action R-3).

(3) Preliminary Analysis (Phase I) (Action R-4).

(4) Onsite Verification and Interviews (Phase II) (Action R-5).

(5) Exit Conference (Action R-6).

(6) Compliance Determination and Formal Notification (Actions R-8, R-9, R-10, R-11, R-12).

The compliance review procedure, as described herein and in appendix D provides for continual monitoring of the employment process. Monitoring officials at all levels shall analyze submissions from field offices to ensure proper completion of procedural requirements and to ascertain the effectiveness of program implementation.

(b) *Review scheduling. (Actions R-1 and R-2).* Because construction work forces are not constant, particular attention should be paid to the proper scheduling of equal opportunity compliance reviews. Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's work forces:

(1) Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations);

(2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area;

(3) Working on projects that include special training provisions; and

(4) Where compliance with equal opportunity requirements is questionable. (Based on previous PR-1391's (23 CFR part 230, subpart A, appendix C) Review Reports and Hometown Plan Reports).

In addition, the following considerations shall apply:

(5) Reviews specifically requested by the Washington Headquarters shall receive priority scheduling;

(6) Compliance Reviews in geographical areas covered by areawide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in § 230.415.

(7) Reviews shall be conducted prior to or during peak employment periods.

(8) No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by Washington Headquarters; and

(9) For compliance reviews based on an area work force (outside of areawide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:

(i) Union geographical boundaries;

(ii) The geographical area from which the contractor recruits employees, i.e. reasonable recruitment area;

(iii) Standard Metropolitan Statistical Area (SMSA) or census tracts; and

(iv) The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

(c) *Contractor notification (Action R-3).* (1) The Compliance Specialist should usually provide written notification to the contractor of the pending compliance review at least 2 weeks prior to the onsite verification and

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interviews. This notification shall include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required.

(2) The contractor shall be requested to provide a meeting place on the day of the visit either at the local office of the contractor or at the jobsite.

(3) The contractor shall be requested to supply all of the following information to the Compliance Specialist prior to the onsite verification and interviews.

(i) Current Form PR-1391 developed from the most recent payroll;

(ii) Copies of all current bargaining agreements;

(iii) Copies of purchase orders and subcontracts containing the EEO clause;

(iv) A list of recruitment sources available and utilized;

(v) A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other Federal, State, or local agency regarding the contractor or any source of employees;

(vi) A list of promotions made during the past 6 months, to include race, national origin, and sex of employee, previous job held, job promoted into; and corresponding wage rates;

(vii) An annotated payroll to show job classification, race, national origin and sex;

(viii) A list of minority- or female-owned companies contacted as possible subcontractors, vendors, material suppliers, etc.; and

(ix) Any other necessary documents or statements requested by the Compliance Specialist for review prior to the actual onsite visit.

(4) For a project review, the prime contractor shall be held responsible for ensuring that all active subcontractors are present at the meeting and have supplied the documentation listed in § 230.409(c)(3).

(d) *Preliminary analysis (Phase I) (Action R-4).* Before the onsite verification and interviews, the Compliance Specialist shall analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

(1) The contractor's current work force;

(2) The contractor's relationship with referral sources, e.g., unions, employment agencies, community action agencies, minority and female organizations, etc.;

(3) The minority and female representation of sources;

(4) The availability of minorities and females with requisite skills in a reasonable recruitment area;

(5) Any pending EEOC or Department of Justice cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or the referral sources; and

(6) The related projects (and/or contractor) files of FHWA regional or division and State Coordinator's offices to obtain current information relating to the status of the contractor's project(s), value, scheduled duration, written corrective action plans, PR-1391 or Manpower Utilization Reports, training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.

(e) *Onsite verification and interviews (Phase II) (Action R-5).* (1) Phase II of the review consists of the construction or home office site visit(s). During the initial meeting with the contractor, the following topics shall be discussed:

(i) Objectives of the visit;

(ii) The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and

(iii) Arrangements for the site tour(s) and employee interviews.

(2) The Compliance Specialist shall make a physical tour of the employment site(s) to determine that:

(i) EEO posters are displayed in conspicuous places in a legible fashion;

(ii) Facilities are provided on a nonsegregated basis (e.g. work areas, washroom, timeclocks, locker rooms, storage areas, parking lots, and drinking fountains);

(iii) Supervisory personnel have been oriented to the contractor's EEO commitments;

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(iv) The employee referral source system is being implemented;

(v) Reported employment data is accurate;

(vi) Meetings have been held with employees to discuss EEO policy, particularly new employees; and

(vii) Employees are aware of their right to file complaints of discrimination.

(3) The Compliance Specialist should interview at least one minority, one nonminority, and one woman in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.

(4) The Compliance Specialist shall, on a sample basis, determine the union membership status of union employees on the site (e.g. whether they have permits, membership cards, or books, and in what category they are classified [e.g., A, B, or C]).

(5) The Compliance Specialist shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

(6) The Compliance Specialist shall determine, and the report shall indicate the following:

(i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

(ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

(iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

(iv) Is there impartiality in treatment of minorities and women?

(v) Are affirmative action measures of an isolated nature or are they continuing?

(vi) Have the contractor's efforts produced results?

(f) *Exit conference (Action R-6).* (1) During the exit conference with the contractor, the following topics shall be discussed:

(i) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

(ii) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

(iii) Any other matters that would best be resolved before concluding the onsite portion of the review.

(2) Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the Compliance Specialist shall prepare the review report and make a determination of either:

(i) Compliance, and so notify the contractor; or

(ii) Noncompliance, and issue a 30-day show cause notice.

The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing. (Action R-7) A voluntary corrective action plan should be accepted with the understanding that it only address those problems uncovered prior to the exit conference.

(g) *Compliance determinations (Action R-8).* (1) The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the Compliance Specialist conducting the review of the contractor's compliance or noncompliance with contractual provisions pursuant to E.O. 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.

(2) Compliance determinations on contractors working in a Hometown Plan Area shall reflect the status of those crafts covered by part II of the plan bid conditions. Findings regarding part I crafts shall be transmitted through channels to the Washington Headquarters, Office of Civil Rights.

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(3) The compliance status of the contractor will usually be reflected by positive efforts in the following areas:

(i) The contractor's equal employment opportunity (EEO) policy;

(ii) Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;

(iii) The authority and responsibilities of the EEO officer;

(iv) The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;

(v) The extent of participation and minority and female utilization in FHWA training programs;

(vi) The contractor's review of personnel actions to ensure equal opportunities;

(vii) The contractor's participation in apprenticeship or other training;

(viii) The contractor's relationship (if any) with unions and minority and female union membership;

(ix) Effective measures to assure nonsegregated facilities, as required by contract provisions;

(x) The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and

(xi) The adequacy of the contractor's records and reports.

(4) A contractor shall be considered to be in compliance (Action R-9) when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to acheive this goal shall be result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.

(5) A contractor shall be considered to be in noncompliance (Action R-10) when:

(i) The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or

(ii) The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

(h) *Show cause procedures*—(1) *General.* Once the onsite verification and exit conference (Action R-5) have been completed and a compliance determination made, (Action R-8), the contractor shall be notified in writing of the compliance determination. (Action R-11 or R-12) This written notification shall be sent to the contractor within 15 days following the completion of the onsite verification and exit conference. If a contractor is found in noncompliance (Action R-10), action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice (Action R-12). The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

(2) *When a show cause notice is required.* A show cause notice shall be issued when a determination of noncompliance is made based upon:

(i) The findings of a compliance review;

(ii) The results of an investigation which verifies the existence of discrimination; or

(iii) Areawide plan reports that show an underutilization of minorities (based on criteria of U.S. Department of Labor's Optional Form 66 "Manpower Utilization Report") throughout the contractor's work force covered by part II of the plan bid conditions.

(3) *Responsibility for issuance.* (i) Show cause notices will normally be issued by SHA's to federally assisted contractors when the State has made a determination of noncompliance, or when FHWA has made such a determination and has requested the State to issue the notice.

(ii) When circumstances warrant, the Regional Federal Highway Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

(iii) The Regional Federal Highway Administrators in Regions 8, 10, and the Regional Engineer in Region 15, shall issue show cause notices to direct Federal contractors found in noncompliance.

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(4) *Content of show cause notice.* The show cause notice must: (See sample—appendix A of this subpart)

(i) Notify the contractor of the determination of noncompliance;

(ii) Provide the basis for the determination of noncompliance;

(iii) Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;

(iv) Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;

(v) Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and

(vi) Advise the contractor of the availability and willingness of the Compliance Specialist to conciliate within the time limits of the show cause notice.

(5) *Preparing and processing the show cause notice.* (i) The State or FHWA official who conducted the investigation or review shall develop complete background data for the issuance of the show cause notice and submit the recommendation to the head of the SHA or the Regional Federal Highway Administrator, as appropriate.

(ii) The recommendation, background data, and final draft notice shall be reviewed by appropriate State or FHWA legal counsel.

(iii) Show cause notices issued by the SHA shall be issued by the head of that agency or a designee.

(iv) The notice shall be personally served to the contractor or delivered by certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.

(v) The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause period. (Action R-13).

(vi) The 30-day show cause notice shall be issued directly to the noncompliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

(6) *Conciliation efforts during show cause period.* (i) The Compliance Specialist is required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained in the State, FHWA division, or FHWA regional office's case files, as appropriate, indicating actions and reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on verbal communication and written correspondence, requests for assistance or interpretations, and other relevant matters.

(ii) In instances where a contractor is determined to be in compliance after a show cause notice has been issued, the show cause notice will be recinded and the contractor formally notified (Action R-17). The FHWA Washington Headquarters, Office of Civil Rights, shall immediately be notified of any change in status.

(7) *Corrective action plans.* (i) When a contractor is required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted. (See Sample Corrective Action Plan—appendix B of this subpart)

(ii) When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports. (Action R-15 and R-17).

(iii) When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, the formal hearing process shall be recommended through appropriate channels by the compliance specialist immediately upon expiration of the 30-day show cause period. (Action R-16, R-18, R-19)

(iv) When a contractor, after having submitted an acceptable corrective

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action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, the formal hearing process must be recommended immediately. There are no provisions for reinstituting a show cause notice.

(v) When, however, a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be recommended immediately.

(vi) A contractor operating under an approved voluntary corrective action plan (i.e. plan entered into prior to the issuance of a show cause) must be issued a 30-day show cause notice in the situations referred to in paragraphs (h) (7) (iv) and (v) of this section, i.e., failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

(i) *Followup reviews.* (1) A followup review is an extension of the initial review process to verify the contractors performance of corrective action and to validate progress report information. Therefore, followup reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

(2) Followup reviews shall be reported as a narrative summary referencing the initial review report.

(j) *Hearing process.* (1) When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing (Action R-19). The Contractor should be notified of this action.

(2) Recommendations to the Federal Highway Administrator for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

(i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;

(ii) Copies of any contractor or subcontractor certifications;

(iii) Copy of show cause notice;

(iv) Copies of any corrective action plans; and

(v) Copies of all pertinent Manpower Utilization Reports, if applicable.

(3) SHA's through FHWA regional and division offices, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights, for the Department of Transportation.

(k) *Responsibility determinations.* (1) In instances where requests for formal hearings are pending OFCCP approval, the contractor may be declared a nonresponsible contractor for inability to comply with the equal opportunity requirements.

(2) SHA's shall refrain from entering into any contract or contract modification subject to E.O. 11246, as amended, with a contractor who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to E.O. 11246, as amended.

§ 230.411 Guidance for conducting reviews.

(a) *Extensions of time.* Reasonable extensions of time limits set forth in these instructions may be authorized by the SHA's or the FHWA regional office, as appropriate. However, all extensions are subject to Washington Headquarters approval and should only be granted with this understanding. The Federal Highway Administrator shall be notified of all time extensions granted and the justification therefor. In sensitive or special interest cases, simultaneous transmittal of reports and other pertinent documents is authorized.

(b) *Contract completion.* Completion of a contract or seasonal shutdown

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shall not preclude completion of the administrative procedures outlined herein or the possible imposition of sanctions or debarment.

(c) *Home office reviews outside regions.* When contractor's home offices are located outside the FHWA region in which the particular contract is being performed, and it is determined that the contractors' home offices should be reviewed, requests for such reviews with accompanying justification shall be forwarded through appropriate channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR) shall request the appropriate region to conduct the home office review.

(d) *Employment of women.* Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work forces.

(e) *Effect of exclusive referral agreements.* (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

(i) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be informed of the criteria outlined in § 230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

§ 230.413 Review reports.

(a) *General.* (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

(2) The completed compliance review report shall contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status.

(3) Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

(4) The compliance review report shall contain at least the following information.[1] (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, i.e. area work force, project work force, home office work force, and target area work force.

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[1]The Federal Highway Administration will accept completed Form FHWA-86 for the purpose. The form is available at the offices listed in 49 CFR part 7, appendix D.

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(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

(x) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.

(xi) Concurrences at appropriate levels.

(5) Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

(6) Each review level is responsible for ensuring that required information is contained in the report.

(7) When a project review is conducted, the project work force shall be reported. When an areawide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area), then areawide work force shall be reported. When a home office review is conducted, only home office work force shall be reported. Other information required by regional offices shall be detached before forwarding the reports to the Washington Headquarters, OCR.

(8) The Washington Headquarters, OCR, shall be provided all of the following:

(i) The compliance review report required by § 230.413(a)(4).

(ii) Corrective action plans.

(iii) Show cause notices or compliance notifications.

(iv) Show cause recissions.

While other data and information should be kept by regional offices (including progress reports, correspondence, and similar review backup material), it should not be routinely forwarded to the Washington Headquarters, OCR.

(b) *Administrative requirements*—(1) *State conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the State Compliance Specialist will:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the contractor of the compliance determination, i.e., send the contractor either notification of compliance or show cause notice; and

(D) Forward three copies of the compliance review report, and the compliance notification or show cause notice to the FHWA division EEO Specialist.

(ii) Within 10 days of receipt, the FHWA division EEO Specialist shall:

(A) Analyze the State's report, ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward two copies of the compliance review report, and the compliance notification or show cause notice to the Regional Civil Rights Director.

(iii) Within 15 days of receipt, the FHWA Regional Civil Rights Director shall:

(A) Analyze the report, ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(2) *FHWA division conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the division EEO Specialist shall:

(A) Prepare compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the State to send the contractor the compliance determination, i.e. either notification of compliance or show cause notice; and

(D) Forward two copies of the compliance review report and the compli-

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ance notification or show cause notice to the Regional Civil Rights Director.

(ii) Within 15 days of receipt, the FHWA Regional Civil Rights Director will take the steps outlined in § 230.413(b)(1)(iii).

(3) *FHWA region conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference the regional EEO Specialist shall:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Inform the appropriate division to notify the State to send the contractor the compliance determination i.e. either notification of compliance or show cause notice; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(4) Upon receipt of compliance review reports, the Washington Headquarters, OCR, shall review, resolve any nonconcurrences, and record them for the purpose of:

(i) Providing ongoing technical assistance to FHWA regional and division offices and SHA's;

(ii) Gathering a sufficient data base for program evaluation;

(iii) Ensuring uniform standards are being applied in the compliance review process;

(iv) Initiating appropriate changes in FHWA policy and implementing regulations; and

(v) Responding to requests from the General Accounting Office, Office of Management and Budget, Senate Subcommittee on Public Roads, and other agencies and organizations.

§ 230.415 Consolidated compliance reviews.

(a) *General.* Consolidated compliance reviews shall be implemented to determine employment opportunities on an areawide rather than an individual project basis. The consolidated compliance review approach shall be adopted and directed by either Headquarters, region, division, or SHA, however, consolidated reviews shall at all times remain a cooperative effort.

(b) OFCCP policy requires contracting agencies to ensure compliance, in hometown an imposed plan areas, on an areawide rather than a project basis. The consolidated compliance review approach facilitates implementation of this policy.

(c) *Methodology*—(1) *Selection of a target area.* In identifying the target area of a consolidated compliance review (e.g. SMSA, hometown or imposed plan area, a multicounty area, or an entire State), consideration shall at least be given to the following facts:

(i) Minority and female work force concentrations;

(ii) Suspected or alleged discrimination in union membership or referral practices by local unions involved in highway construction;

(iii) Present or potential problem areas;

(iv) The number of highway projects in the target area; and

(v) Hometown or imposed plan reports that indicate underutilization of minorities or females.

(2) *Determine the review period.* After the target area has been selected, the dates for the actual onsite reviews shall be established.

(3) *Obtain background information.* EEO-3's Local Union Reports, should be obtained from regional offices of the EEOC. Target area civilian labor force statistics providing percent minorities and percent females in the target area shall be obtained from State employment security agencies or similar State agencies.

(4) *Identify contractors.* Every nonexempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish areawide employment patterns in the target area, employment data is needed for all contractors and subcontractors in the area. However, only those contractors with significant work forces (working prior to peak and not recently reviewed) may need to be actually reviwed onsite. Accordingly, once all contractors are identified, those contractors which will actually be reviewed onsite shall be determined. Compliance determinations shall only reflect the status of crafts covered by part II of plan bid conditions. Employ-

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ment data of crafts covered by part I of plan bid conditions shall be gathered and identified as such in the composite report, however, OFCCP has reserved the responsibility for compliance determinations on crafts covered by part I of the plan bid conditions.

(5) *Contractor notification.* Those contractors selected for onsite review shall be sent a notification letter as outlined in § 230.409(c) along with a request for current workforce data[2] for completion and submission at the onsite review. Those contractors in the target area not selected for onsite review shall also be requested to supply current workforce data as of the onsite review period, and shall return the data within 15 days following the onsite review period.

(6) *Onsite reviews.* Compliance reviews shall then be conducted in accordance with the requirements set forth in § 230.409. Reviewers may use Form FHWA-86, Compliance Data Report, if appropriate. It is of particular importance during the onsite reviews that the review team provide for adequate coordination of activities at every stage of the review process.

(7) *Compliance determinations.* Upon completion of the consolidated reviews, compliance determinations shall be made on each review by the reviewer. Individual show cause notices or compliance notifications shall be sent (as appropriate) to each reviewed contractor.

The compliance determination shall be based on the contractor's target area work force (Federal, Federal-aid and non-Federal), except when the target area is coincidental with hometown plan area, compliance determinations must not be based on that part of a contractor's work force covered by part I of the plan bid conditions, as previously set forth in this regulation. For example: ABC Contracting, Inc. employs carpenters, operating engineers, and cement masons. Carpenters and operating engineers are covered by part II of the plan bid conditions, however, cement masons are covered by part I of the plan bid conditions. The compliance determination must be based only on the contractor's utilization of carpenters and operating engineers.

(d) *Reporting*—(1) *Composite report.* A final composite report shall be submitted as a complete package to the Washington Headquarters, OCR, within 45 days after the review period and shall consist of the following:

(i) Compliance review report, for each contractor and subcontractor with accompanying show cause notice or compliance notification.

(ii) Work force data to show the aggregate employment of all contractors in the target area.

(iii) A narrative summary of findings and recommendations to include the following:

(A) A summary of highway construction employment in the target area by craft, race, and sex. This summary should explore possible patterns of discrimination or underutilization and possible causes, and should compare the utilization of minorities and females on contractor's work forces to the civilian labor force percent for minorities and females in the target area.

(B) If the target area is a plan area, a narrative summary of the plan's effectiveness with an identification of part I and part II crafts. This summary shall discuss possible differences in minority and female utilization between part I and part II crafts, documenting any inferences drawn from such comparisons.

(C) If applicable, discuss local labor unions' membership and/or referral practices that impact on the utilization of minorities and females in the target area. Complete and current copies of all collective bargaining agreements and copies of EEO-3, Local Union Reports, for all appropriate unions shall accompany the composite report.

(D) Any other appropriate data, analyses, or information deemed necessary for a complete picture of the areawide employment.

(E) Considering the information compiled from the summaries listed above, make concrete recommenda-

[2]The Consolidated Workforce Questionnaire is convenient for the purpose and appears as attachment 4 to volume 2, chapter 2, section 3 of the Federal-Aid Highway Program Manual, which is available at the offices listed in 49 CFR part 7, appendix D.

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tions on possible avenues for correcting problems uncovered by the analyses.

(2) *Annual planning report.* The proper execution of consolidated compliance reviews necessitates scheduling, along with other fiscal program planning. The Washington Headquarters, OCR, shall be notified of all planned consolidated reviews by August 10 of each year and of any changes in the target area or review periods, as they become known. The annual consolidated planning report shall indicate:

(i) Selected target areas:

(ii) The basis for selection of each area; and

(iii) The anticipated review period (dates) for each target area.

APPENDICES TO SUBPART D

APPENDIX A—SAMPLE SHOW CAUSE NOTICE

Certified Mail, Return Receipt Requested
Date
Contractor's Name
Address
City, State, and Zip Code.

DEAR CONTRACTOR: As a result of the review of your (Project Number) project located at (Project Location) conducted on (Date) by (Reviewing Agency), it is our determination that you are not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

List of Deficiencies
1.
2.
3.

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority and female employment in your operations, particularly in the semiskilled and skilled categories of employees.

The Department of Labor regulations (41 CFR 60) implementing Executive Order 11246, as amended, are applicable to your Federal-aid highway construction contract and are controlling in this matter (see Required Contract Provisions, Form PR-1273, Clause II). Section 60-1.20(b) of these regulations provides that when equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. In accordance with instructions issued by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of minority employees.

You are specifically advised that making the commitment discussed above will not preclude a further determination of noncompliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at ————(Address) at ———— (Time) on ————(Date) for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance during the effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration, the Department of Transportation, and OFCCP and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under Executive Order 11246, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by Executive Order 11246, as amended, may also be imposed.

We encourage you to to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to (Name, Address, and Phone).

Sincerely yours,

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[41 FR 34245, Aug. 13, 1976]

APPENDIX B—SAMPLE CORRECTIVE ACTION PLAN

Deficiency 1: Sources likely to yield minority employees have not been contacted for recruitment purposes.

Commitment: We have developed a system of written job applications at our home office which readily identifies minority applicants. In addition to this, as a minimum, we will contact the National Association for the Advancement of Colored People (NAACP), League of Latin American Citizens (LULAC), Urban League, and the Employment Security Office within 20 days to establish a referral system for minority group applicants and expand our recruitment base. We are in the process of identifying other community organizations and associations that may be able to provide minority applicants and will submit an updated listing of recruitment sources and evidence of contact by ————(Date).

Deficiency 2: There have been inadequate efforts to locate, qualify, and increase skills of minority and female employees and applicants for employment.

Commitment: We will set up an individual file for each apprentice or trainee by ————(Date) in order to carefully screen the progress, ensure that they are receiving the necessary training, and being promoted promptly upon completion of training requirements. We have established a goal of at least 50 percent of our apprentices and trainees will be minorities and 15 percent will be female. In addition to the commitment made to deficiency number 1, we will conduct a similar identification of organizations able to supply female applicants. Based on our projected personnel needs, we expect to have reached our 50 percent goal for apprentices and trainees by ————(Date).

Deficiency 3: Very little effort to assure subcontractors have meaningful minority group representation among their employees.

Commitment: In cooperation with the Regional Office of Minority Business Enterprise, Department of Commerce, and the local NAACP, we have identified seven minority-owned contractors that may be able to work on future contracts we may receive. These contractors (identified in the attached list) will be contacted prior to our bidding on all future contracts. In addition, we have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority representation. This meeting will be held on ————(Date) and we will summarize the discussions and current posture of each subcontractor for your review by ————(Date) Additionally, as requested, we will submit a PR-1391 on ————(Date), ————(Date), ————(Date). Finally, we have committed ourselves to maintaining at least 20 percent minority and female representation in each trade during the time we are carrying out the above commitments. We plan to have completely implemented all the provisions of these commitments by ————(Date).

[41 FR 34245, Aug. 13, 1976]

APPENDIX C—SAMPLE SHOW CAUSE RESCISSION

Certified Mail, Return Receipt Requested
Date
Contractor
Address
City, State, and Zip Code

DEAR CONTRACTOR: On ————, (Date) you received a 30-day show cause notice from this office for failing to implement the required contract requirements pertaining to equal employment opportunity.

Your corrective action plan, discussed and submitted at the compliance conference held on ————(Date), has been reviewed and determined to be acceptable. Your implementation of your corrective action plan shows that you are now taking the required affirmative action and can be considered in compliance with Executive Order 11246, as amended. If it should later be determined that your corrective action plan is not sufficient to achieve compliance, this Rescission shall not preclude a subsequent finding of noncompliance.

In view of the above, this letter is to inform you that the 30-day show cause notice of ————(Date) is hereby rescinded. You are further advised that if it is found that you have failed to comply with the provisions of your corrective action plan, formal sanction proceedings will be instituted immediately.

Sincerely,

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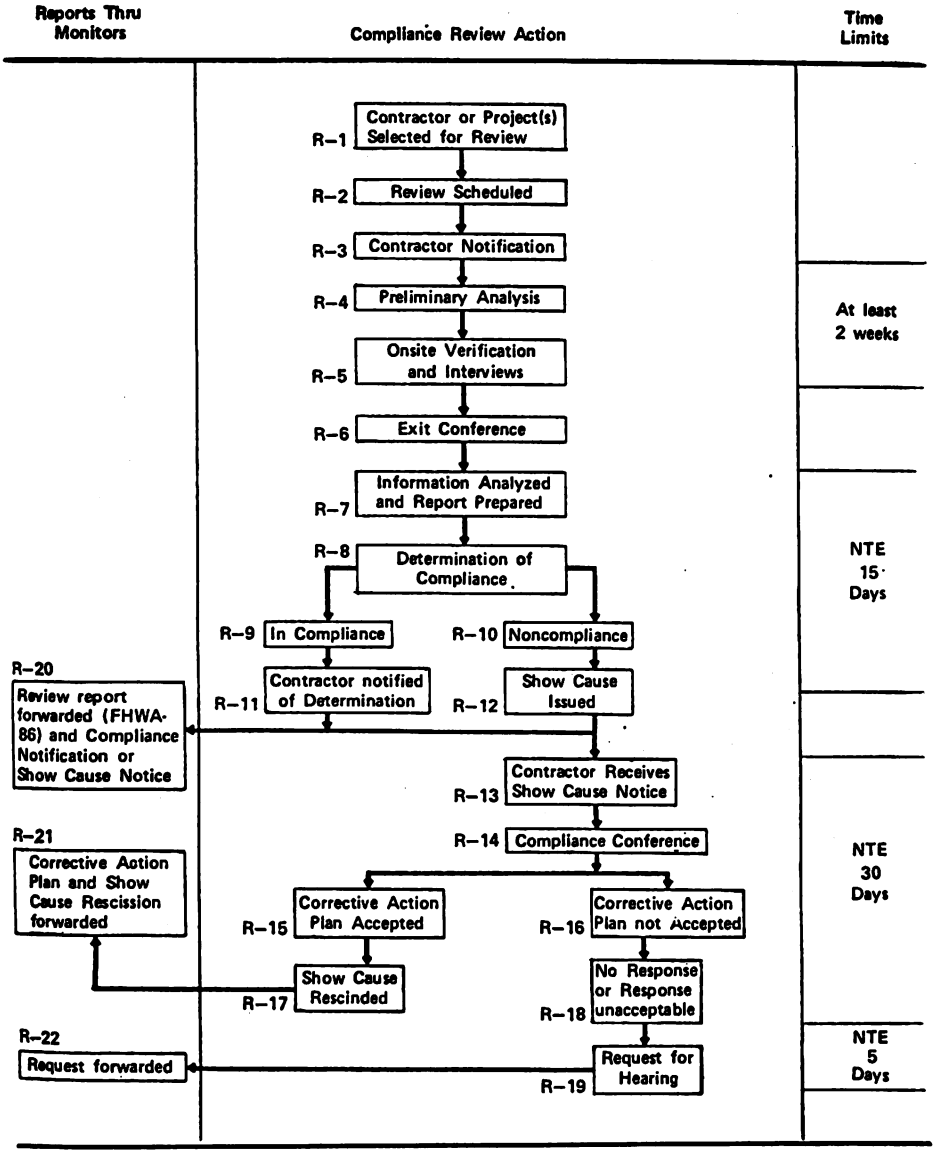
APPENDIX D

EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART 46


Reports Thru Monitors
Compliance Review Action
Time Limits
R–1 Contractor or Project(s) Selected for Review
R–2 Review Scheduled
R–3 Contractor Notification
R–4 Preliminary Analysis
R–5 Onsite Verification and Interviews
R–6 Exit Conference
R–7 Information Analyzed and Report Prepared
R–8 Determination of Compliance
At least 2 weeks
NTE 15 Days
R–9 In Compliance
R–10 Noncompliance
R–11 Contractor notified of Determination
R–12 Show Cause Issued
R–13 Contractor Receives Show Cause Notice
R–14 Compliance Conference
NTE 30 Days
R–15 Corrective Action Plan Accepted
R–16 Corrective Action Plan not Accepted
R–17 Show Cause Rescinded
R–18 No Response or Response unacceptable
R–19 Request for Hearing
NTE 5 Days
R–20 Review report forwarded (FHWA-86) and Compliance Notification or Show Cause Notice
R–21 Corrective Action Plan and Show Cause Rescission forwarded
R–22 Request forwarded

[41 FR 34245, Aug. 13, 1976]

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SUBCHAPTER D—NATIONAL HIGHWAY INSTITUTE

PART 260—EDUCATION AND TRAINING PROGRAMS

Subpart A—Fellowship and Scholarship Grants

Sec.
260.101 Purpose.
260.103 Definitions.
260.105 Policy.
260.107 Eligibility.
260.109 Selection.
260.111 Responsibilities of educational institutions.
260.113 Responsibilities of employing agencies.
260.115 Equal opportunity.
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260.401 Purpose.
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260.407 Implementation and reimbursement.

APPENDIX A TO PART 260—REQUEST FOR USE OF FEDERAL-AID HIGHWAY FUNDS FOR EDUCATION OR TRAINING

Subpart A—Fellowship and Scholarship Grants

AUTHORITY: 23 U.S.C. 307(a), 315, 321 and 403; and 49 CFR 1.48(b).

SOURCE: 43 FR 3558, Jan. 26, 1978, unless otherwise noted.

§ 260.101 Purpose.

To establish policy for the Federal Highway Administration (FHWA) Fellowship and Scholarship Programs as administered by the National Highway Institute (NHI).

§ 260.103 Definitions.

As used in this regulation, the following definitions apply:

(a) *Candidate.* One who meets the eligibility criteria set forth in § 260.107, and who has completed and submitted the necessary forms and documents in order to be considered for selection for a fellowship or scholarship.

(b) *Direct educational expenses.* Those expenses directly related to attending school including tuition, student fees, books, and expendable supplies but excluding travel expenses to and from the school.

(c) *Employing agency.* The agency for which the candidate works. This may be either a State or local highway/transportation agency or the FHWA.

(d) *Fellowship.* The grant presented to the recipient's school and administered by the school to assist the candidate financially during the period of graduate study.

(e) *Living stipend.* The portion of the fellowship or scholarship grant remaining after the direct educational expenses have been deducted.

(f) *Local highway/transportation agency.* The agency or metropolitan planning organization with the responsibility for initiating and carrying forward a highway program or public transportation program utilizing highways at the local level, usually the city or county level.

(g) *National Highway Institute (NHI).* The organization located within the FHWA responsible for the administration of the FHWA fellowship and scholarship grant programs.

(h) *Recipient.* The successful candidate receiving a fellowship or scholarship.

(i) *Scholarship.* The grant presented to the recipient's school and administered by the school to assist the candidate financially during the period of post-secondary study.

(j) *State highway/transportation agency.* The agency with the responsibility for initiating and carrying forward a highway program or public transportation program utilizing highways at the State level.

§ 260.105 Policy.

It is the policy of the FHWA to administer, through the NHI, fellowship and scholarship grant programs to assist State and local agencies and the FHWA in developing the expertise needed for the implementation of their highway programs and to assist

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in the development of more effective transportation programs at all levels of government. These programs shall provide financial support for up to 24 months of either full-time or part-time study in the field of highway transportation. The programs for each year shall be announced by FHWA notices.[1] These notices shall contain an application form and shall announce the number of grants to be awarded and their value.

[43 FR 3558, Jan. 26, 1978, as amended at 45 FR 67091, Oct. 9, 1980]

§ 260.107 Eligibility.

(a) Prior recipients of FHWA scholarships or fellowships are eligible if they will have completed all specific work commitments before beginining study under the programs for which applications are made.

(b) Candidates for the fellowship program shall have earned bachelor's or comparable college-level degrees prior to beginining advanced studies under the program.

(c) Candidates shall submit evidence of acceptance, or probable acceptance, for study in programs that will enhance their contributions to their employers. Evidence of probable acceptance may be a letter from the department chairman or other school official.

(d) Candidates shall agree to pursue certain minimum study loads as determined by the FHWA and designated in the FHWA notices announcing the programs each year.

(e) FHWA employees who receive awards will be required to execute continued service agreements, consistent with the Government Employees Training Act requirements, which obligate the employees to continue to work for the agency for three times the duration of the training received.

(f) Candidates who are students or employees of State or local highway/transportation agencies shall agree in writing to work on a full-time basis in public service with State or local highway/transportation agencies for a specified period of time after completing study under the program. The FHWA notices announcing the programs each year shall specify the time period of the work commitment.

(g) Candidates shall agree to respond to brief questionnaires designed to assist the NHI in program evaluation both during and following the study period.

(h) Recipients of awards for full-time shall agree to limit their part-time employment as stipulated in the FHWA notice announcing the programs.

(i) Candidates shall not profit financially from FHWA grants. Where acceptance of the living stipend portion of the grant would result in a profit to the candidate, as determined by comparing the candidate's regular full-time salary with the candidate's part-time salary and employer salary support plus living stipend, the grant amount will be reduced accordingly. In cases where a candidate must relocate and maintain two households, exceptions to this condition will be considered.

(j) Candidates shall be citizens, or shall declare their intent to become citizens of the United States.

§ 260.109 Selection.

(a) Candidates shall be rated by a selection panel appointed by the Director of the NHI. Members of the panel shall represent the highway transportation interests of government, industry, and the academic community. The factors considered by the selection panel are weighed in accordance with specific program objectives.

(b) The major factors to be considered by the panel are:

(1) Candidate's potential to contribute to a public agency's highway transportation program,

(2) Relevance of a candidate's study program to the objectives of the fellowship or scholarship program,

(3) Relevant experience, and

(4) Academic and professional achievements.

(c) Using ratings given by the selection panel, the Director of the NHI shall select candidates for awards and designate alternates.

[1] The Federal Highway Administration notices are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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(d) The FHWA may designate in the FHWA notices announcing the programs the maximum number of awards that will be made to employees of any one agency.

§ 260.111 Responsibilities of educational institutions.

(a) The college or university chosen by the grant recipient shall enter into an appropriate agreement with the FHWA providing for the administration of the grant by the college or university.

(b) The college or university chosen by the recipient shall designate a faculty advisor prior to the commitment of funds by the FHWA. The faculty advisor will be requested to submit reports of the recipient's study progress following completion of each study period. These reports are oriented toward total program evaluation. To assure the recipient's rights to privacy, the FHWA will obtain appropriate advance concurrences from the recipient.

§ 260.113 Responsibilities of employing agencies.

(a) A candidate's employing agency is responsible for furnishing a statement of endorsement and information concerning the relevancy of the candidate's study to agency requirements. The agency is encouraged to identify educational and training priorities and to provide backup to support its priority candidates for these programs.

(b) Employing agencies are encouraged to give favorable consideration to the requests of candidates for educational leave and salary support for the study period to facilitate the candidates' applications. Agency decisions involving salary support and educational leave that will affect the acceptance of awards by recipients should be made at the earliest possible date to provide adequate time for the FHWA to select alternates to replace candidates that decline their awards.

(c) Agencies are responsible for negotiations with their candidates concerning conditions of reinstatement and the candidates' commitments to return to work.

(d) Employing agencies are encouraged to publicize the availability of these grants throughout the agencies, to implement procedures for internal evaluation of applications, and to forward the applications to the FHWA division office in their State.

(e) Employing agencies that choose to process their employees' applications are responsible for observing the cutoff date for the FHWA to receive applications. This date will be stipulated in the Notices announcing the program for each academic year.

§ 260.115 Equal opportunity.

(a) Consistent with the provisions of the Civil Rights Act of 1964 and Title VI, assurances executed by each State, 23 U.S.C. 324, and 29 U.S.C. 794, no applicant, including otherwise qualified handicapped individuals, shall on the grounds of race, color, religion, sex, national origin, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under this program.

(b) In accordance with Executive Order 11141, no individual shall be denied benefits of this program because of age.

(c) Agencies should make information on this program available to all eligible employees, including otherwise qualified handicapped individuals, so as to assure nondiscrimination on the grounds of race, color, religion, sex, national origin, age, or handicap.

§ 260.117 Application procedures.

(a) The FHWA notices announcing each year's programs and containing the application form may be obtained from FHWA regional and division offices, State highway agencies, metropolitan planning organizations, Governors' highway safety representatives, Urban Mass Transportation Administration regional directors, major transit authorities and from colleges and universities. Forms may also be obtained from the NHI, HHI-3, FHWA, Washington, DC 20590.

(b) In order to become a candidate, the applicant shall complete and forward the application form according to the instructions in the FHWA notice announcing the programs. The cutoff date for submitting the application stipulated in the notices should be observed.

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Subparts B—C [Reserved]

Subpart D—State Education and Training Programs

AUTHORITY: 23 U.S.C. 315, 321 (b) and (c); 49 CFR 1.48(b).

SOURCE: 43 FR 35477, Aug. 10, 1978, unless otherwise noted.

§ 260.401 Purpose.

To prescribe policy and implement procedures for the administration of Federal-aid funds for education and training of State and local highway department employees.

§ 260.403 Policy.

It is the policy of the Federal Highway Administration (FHWA) to provide continuing education of State and local highway agency employees engaged or to be engaged in Federal-aid highway work. To carry out this policy, States are encouraged to fully utilize the authority contained in 23 U.S.C. 321(b) and 321(c).

§ 260.405 Application and approval procedures.

The State may apply for education and training funds by submitting a signed agreement designating the desired Federal-aid funds, not to exceed the limits in 23 U.S.C. 321(b). The FHWA's approval of the agreement will constitute obligation of funds and authorization for work to proceed.

§ 260.407 Implementation and reimbursement.

(a) After execution of the fiscal agreement, the State may make grants and contracts with public and private agencies, institutions, individuals, and the National Highway Institute to provide highway-related training and education. The principal recipients of this training shall be employees who are engaged or likely to be engaged, in Federal-aid highway work.

(b) Claims for Federal-aid reimbursement of costs incurred may be submitted following established procedures to cover 75 percent of the cost of tuition and direct educational expenses (including incidental training, equipment, and program materials) exclusive of travel, subsistence, or salary of trainees.

(c) As provided in 23 U.S.C. 321(c), education and training for subject areas that are identified by the FHWA as Federal program responsibilities, shall be provided at no cost to State and local governments.

[43 FR 35477, Aug. 10, 1978, as amended at 45 FR 6378, Jan. 28, 1980; 53 FR 3745, Feb. 9, 1988]

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APPENDIX A

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	1. STATE
REQUEST FOR USE OF FEDERAL-AID HIGHWAY FUNDS FOR EDUCATION OR TRAINING *(NATIONAL HIGHWAY INSTITUTE)*	2. DATE OF REQUEST
	3. PROJECT NO.

4. NAME OF AGENCY SPONSORING COURSE	5. CO-SPONSOR *(If any)*	
6. COURSE TITLE	7. DATE OF PROGRAM 7A. BEGINNING / 7B. ENDING	8. ESTIMATED ATTENDANCE

9. PURPOSE AND EDUCATIONAL OBJECTIVES OF THE PROGRAM *(Be as Specific as Possible)*

10. PROPOSED COURSE OUTLINE *(Attach a copy of the course outline including a list of the subjects to be presented, the sequence of their presentation, the proposed speakers and the amount of time allotted to each subject. Also include the source material upon which the course is based, and the text books and collateral references to be used.)*

11. PROPOSED COURSE SCHEDULE. *(Provide information on the length of the course, including number of days, days of the week, and hours per day.)*

12. TOTAL HOURS OF INSTRUCTION

13. CRITERIA FOR ELIGIBILITY OF PARTICIPANTS *(Including organizational affiliation)*

14. WHERE WILL COURSE BE HELD?

15. IS THIS PROGRAM A REPEAT OF A COURSE PREVIOUSLY GIVEN? *(If yes fill-in 15A.)* ☐ YES ☐ NO

15A. WHEN WAS IT LAST HELD?

16. IS THIS PROGRAM RECURRING? *(If yes fill-in 16A.)* ☐ YES ☐ NO

16A. GIVE FREQUENCY ☐ SEMESTER ☐ QUARTER ☐ OTHER *(Specify)* _____

17. NAME AND TITLE OF TECHNICAL DIRECTOR *(Responsible for technical content.)*

18. NAME AND TITLE OF COORDINATOR *(Responsible for arrangements)*

Form FHWA-1422
(Rev. 6-76)

PREVIOUS EDITIONS WILL NOT BE USED

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EXPENDITURES	
19 ITEMS	AMOUNT
A. TEXT BOOKS	$
B. NOTEBOOKS AND SUPPLIES	$
C. PRINTING	$
D. COMMUNICATIONS	$
E. SECRETARIAL	$
F. AUDIO-VISUAL	$
G. PHOTOGRAPHS	$
H. BUSES	$
I. MEETING ROOM RENTAL	$
J. COSTS OF SPONSORING AGENCY'S STAFF TIME SPENT IN PREPARATION AND CONDUCT OF COURSE	$
K. COSTS OF CO-SPONSOR'S STAFF TIME SPENT IN PREPARATION AND CONDUCT OF COURSE	$
L. HONORARIA PAID TO OUTSIDE INSTRUCTOR	$
M. INCIDENTALS	$
N. OTHER ITEMS *(Specify)*	$
TOTAL ESTIMATED COSTS *(Excluding travel, subsistence and salaries of attendees)*	$
20. COST PER ATTENDEE	$
21. AMOUNT TO BE PAID OUT OF ½% FEDERAL-AID FUNDS	$
22. REMARKS	

23. APPROVAL	
REQUEST INITIATED BY *(State Representative, Name and Title)*	DATE
APPROVED *(Division Administrator, Federal Highway Administration)*	DATE

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SUBCHAPTER E—PLANNING

PART 420—PROGRAM MANAGEMENT AND COORDINATION

Subpart A—Highway Planning and Research Program Administration

Sec.
420.101 Purpose.
420.103 Definitions.
420.105 Policy.
420.107 Allocation of PL funds.
420.109 Work program.
420.111 Eligibility of costs.
420.113 Approval and authorization procedures.
420.115 Program monitoring and reporting.
420.117 Fiscal procedures.
420.119 Other requirements.

Subpart B—[Reserved]

AUTHORITY: 23 U.S.C. 104(f), 115, 120, 157, 307, and 315; and 49 CFR 1.48(b).

Subpart A—Highway Planning and Research Program Administration

SOURCE: 55 FR 35402, Aug. 29, 1990, unless otherwise noted.

§ 420.101 Purpose.

This regulation prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of activities undertaken with FHWA highway planning and research funds, including activities/studies funded as separate Federal-aid projects that are not included in a work program. The requirements in this regulation supplement those in 49 CFR part 18 which is applicable to administration of these funds. This subpart also is applicable to the approval and authorization of research and development work programs; additional policies and procedures regarding individual research and development studies are contained in 23 CFR part 511, Research and Development (R&D) Studies and Programs.

§ 420.103 Definitions.

(a) FHWA highway planning and research funds include:

(1) HPR funds, the 1½ percent funds authorized under sections 307(c) (1) and (2) of title 23 U.S.C., to carry out the provisions of 23 U.S.C. 307(c)(1);

(2) PR funds, the optional ½ percent funds authorized under 23 U.S.C. 307(c)(3) (and under the provisions of 23 U.S.C. 103(d)(1) for the urban system) to carry out the provisions of 23 U.S.C. 307(c)(1);

(3) PL funds, the ½ percent metropolitan planning funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134(a); and

(4) Optional 1½ percent and ½ percent minimum allocation funds authorized under 23 U.S.C. 157(c) for carrying out, respectively, the provisions of 23 U.S.C. 307(c)(1) and 23 U.S.C. 134(a).

(b) *Work program* means the periodic statement of proposed work and estimated costs that document the highway planning, research, and development efforts to be undertaken during the next 1- or 2-year period by State highway agencies (SHAs) or their subgrantees.

§ 420.105 Policy.

(a) It is the FHWA's policy to administer FHWA highway planning and research funds supported activities according to the following general principles:

(1) Allow SHAs maximum possible flexibility in their planning and research activities while ensuring legal use of FHWA highway planning and research funds and avoiding unnecessary duplication of efforts.

(2) Allow SHAs to utilize available planning and research resources to meet the highway and transportation needs at the national, State, and local levels.

(3) Allow for the cooperation of the SHAs in providing the necessary planning and research resources to meet national transportation needs.

(4) Within the limitations of available funding and with the understanding that planning activities of national significance are being adequately addressed, allow SHAs to determine which eligible highway planning and research activities they desire to support with FHWA highway planning

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and research funds and at what funding level.

(b) The SHAs shall provide data that support the FHWA's responsibilities to the Congress and to the public. These data will include information required for: preparing proposed legislation and reports to the Congress; evaluating the extent, performance, condition, and use of the Nation's various highway systems; analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; maintaining a critical information base on fuel availability, use and revenues generated; and calculating apportionment factors.

(c) It is FHWA policy to administer FHWA highway planning and research funds supported activities in urbanized areas in accordance with 23 CFR part 450, subpart A, Urban Transportation Planning.

(d) Statewide, urbanized area and other planning activities, and research and development activities may be administered as separate programs, paired in various combinations, or brought together as a single work program. Similarly, these planning and research activities may be authorized for fiscal purposes as one combined or as separate Federal-aid projects.

(e) The SHAs shall have primary responsibility for administering FHWA highway planning and research funds passed through to subgrantees, for ensuring that such funds are expended for purposes pursuant to sections 134(a) and/or 307(c) of title 23 U.S.C., and for ensuring that the funds are administered in accordance with this regulation, 49 CFR part 18, and applicable cost principles.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control numbers 2125-0028 and 2125-0032)

§ 420.107 Allocation of PL funds.

(a) Funds authorized by 23 U.S.C. 104(f) shall be allocated by the SHA to Metropolitan Planning Organizations (MPOs) in accordance with a formula developed by the SHA and approved by the FHWA. When developing or revising the allocation formula, the SHA shall, to the extent possible, consult with the affected MPO(s).

(b) The allocation formula shall consider, but not necessarily be limited to population, status of planning, and metropolitan area transportation needs.

(c) As soon as practicable after PL funds have been apportioned by the FHWA to the State, the SHA shall inform the MPO(s) and the FHWA of the amounts allocated in each area.

(d) If the SHA in a State receiving the minimum apportionment of PL funds under the provisions of 23 U.S.C. 104(f)(2) determines that the share of funds to be allocated to any MPO results in the MPO receiving more funds than necessary to carry out the provisions of 23 U.S.C. 134(a), the SHA may, after considering the views of the appropriate MPO(s) and with the approval of the FHWA, use these funds to finance transportation planning outside of urbanized areas.

§ 420.109 Work program.

(a) Expenditure of FHWA highway planning and research funds, shall be documented by the SHAs and subgrantees in a work program(s) acceptable to the FHWA. The expenditure of PL funds for transportation planning outside of urbanized areas under 23 CFR 420.107(d) may be included in the work program for statewide planning activities or in a separate work program submitted by the SHA.

(b) Work program(s) that document planning activities shall include a description of work to be accomplished and cost estimates for each activity. Additional information on urbanized area work programs is contained in 23 CFR 450.108. Additional information on research and development work program content and format is contained in 23 CFR part 511.

(c) The work program(s) also shall include a financial summary which shows:

(1) Federal share by type of fund,
(2) Matching rate by type of fund,
(3) State and/or local matching share, and
(4) Other State/local funds.

The SHAs that use separate Federal-aid projects in accordance with 23 CFR 420.105(d) shall submit, in addi-

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tion to this funding information required for each program, one overall summary showing the funding for the entire FHWA funded planning and research/development effort.

(d) The SHAs also are encouraged to include cost estimates for 100 percent State/local funded activities for producing FHWA-required data (23 CFR 420.105(b)) and for other planning activities using 100 percent State and/or local funds.

(Reporting and recordkeeping requirements in paragraphs (a), (b), and (c) have been approved by the Office of Management and Budget under control numbers 2125-0039 and 2132-0529)

§ 420.111 Eligibility of costs.

(a) Costs will be eligible for FHWA participation provided the costs:

(1) Are for work performed for purposes pursuant to 23 U.S.C. 134(a) and/or 307(c)(1);

(2) Are verifiable from the SHA's or subgrantee's records;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;

(4) Are provided for in the approved budget, or amendment thereto; and

(5) Were not incurred prior to FHWA authorization.

(b) Indirect costs of SHA planning and research units are eligible only to the extent allowed in accordance with 23 CFR part 140, subpart G.

(c) Indirect costs of MPOs and local governments are allowable if supported by a cost allocation plan/indirect cost proposal in accordance with the provisions of OMB Circular A-87. An initial plan/proposal must be submitted to the Federal cognizant agency for negotiation and approval prior to recovering any indirect costs. The cost allocation plan/indirect cost proposal shall be updated annually and retained by the MPO/local government, unless requested to be resubmitted by the Federal cognizant agency, for review at the time of the audit required in accordance with 23 CFR part 12. However, if the MPO/local government's indirect cost rate varies significantly from the rate approved for the previous year, or if the MPO/local government changes its accounting system and affects the previously approved indirect cost allocation plan/proposal or rate and its basis of application, the indirect cost allocation plan/proposal shall be resubmitted for negotiation and approval. In either case, a rate should be negotiated and approved for billing purposes until a new plan/proposal is approved.

(d) Indirect costs of other SHA subgrantees, including other State agencies, are allowable if supported by a cost allocation plan/indirect cost proposal prepared, submitted, and approved by the cognizant agency in accordance with OMB requirements applicable to the subgrantee.

§ 420.113 Approval and authorization procedures.

(a) The SHA and its subgrantees shall obtain work program approval and authorization to proceed prior to beginning work on activities in the work program. Such approvals and authorizations should be based on final work program documents. The SHA and its subgrantees also shall obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 and for those items of allowable costs which require prior approval in accordance with the applicable cost principles specified in 49 CFR 18.22.

(b) Except for advance construction, authorization to proceed with the work program(s) in whole or in part shall be deemed a contractual obligation of the Federal Government pursuant to 23 U.S.C. 106 and shall require that appropriate funds be available for the full Federal share of the cost of work authorized. Those SHAs that do not have sufficient FHWA highway planning and research funds or obligation authority available to obligate the full Federal share of the entire work program(s) may utilize the advance construction provisions of 23 U.S.C. 115(a) in accordance with the requirements of 23 CFR part 630, subpart G. SHAs that do not meet the advance construction provisions, or do not wish to utilize them, may request authorization to proceed with that

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portion of the work program(s) for which FHWA highway planning and research funds are available. In the latter case, authorization to proceed may be given for either selected work activities or for a portion of the program period, but such authorization shall not constitute any commitment of FHWA to fund the remaining portion of the work program(s) should additional funds become available.

(c) A Federal-Aid Project Agreement (Form PR-2) shall be executed in accordance with the procedures in 23 CFR part 630, subpart C, for each statewide planning, research and development, urbanized area transportation planning work program, individual activity/study, or any combination administered as a single Federal-aid project. The project agreement shall be executed after the authorization has been given by the FHWA to proceed with the work program in whole or in part. In the event that the project agreement is executed for only part of the work program, the project agreement shall be amended by execution of a Form PR-2A, Modification of Federal-Aid Project Agreement, when authorization is given to proceed with additional work.

§ 420.115 Program monitoring and reporting.

(a) In accordance with 49 CFR 18.40, the SHA shall monitor all activities, including those of its subgrantees, supported by FHWA highway planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b) The SHA shall submit performance and expenditure reports, including a report from each subgrantee, that contain as a minimum:

(1) Comparison of actual performance with established goals,

(2) Progress in meeting schedules,

(3) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approval) amounts and actual costs incurred,

(4) Cost overruns/underruns,

(5) Approved work program revisions, and

(6) Other pertinent supporting data. Additional information on reporting requirements for individual research studies is contained in 23 CFR part 511.

(c) The frequency of reports required by paragraph (b) of this section will be annually unless more frequent reporting is determined to be necessary by the FHWA; but in no case will reports be required more frequently than quarterly. These reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after the end of the period for other reports.

(d) Events that have significant impact on the work program(s) shall be reported as soon as they become known. The type of events or conditions that require reporting include: problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(e) A provision of the Federal-Aid Project Agreement requires the preparation of suitable reports to document the results of activities performed with FHWA highway planning and research funds and FHWA approval prior to publishing such reports. The SHA may request a waiver of the requirement for prior approval. The FHWA's approval constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations. Reports prepared for FHWA funded work shall include appropriate credit references and disclaimer statements.

(Reporting and recordkeeping requirements in paragraphs (b) and (c) have been approved by the Office of Management and Budget under control numbers 2125-0039 and 2132-0529)

§ 420.117 Fiscal procedures.

(a) HPR funds shall be administered and accounted for as a single fund regardless of the category of Federal-aid highway funds from which they are derived.

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(b) PR funds may be selected from available balances of any one or all of the appropriate categories of Federal-aid funds up to the limiting amount in each fund. PR funds may be combined into one total in the work program, but each class of PR funds (primary, secondary, or urban) shall be administered and accounted for separately for fiscal purposes.

(c) PL funds shall be administered and accounted for as a single fund.

(d) Optional funds under 23 U.S.C. 157(c) and 23 U.S.C. 307(c)(1) used for highway planning and research purposes shall be identified separately in the work program(s) and shall be administered and accounted for separately for fiscal purposes.

(e) The maximum rate of Federal participation with funds made available under paragraphs (a) through (d) of this section shall be as prescribed in 23 U.S.C. 120(j) unless the FHWA determines that the interests of the Federal-aid highway program would be best served without such match in accordance with 23 U.S.C. 307(c)(4) or 23 U.S.C. 104(f)(3).

(f) The provisions of 49 CFR 18.24 are applicable to any necessary matching of FHWA highway planning and research funds.

(g) Payment shall be in accordance with the provisions of 49 CFR 18.21.

§ 420.119 Other requirements.

(a) The financial management systems of the SHAs and their subgrantees shall be in accordance with the provisions of 49 CFR 18.20(a).

(b) Program income, as defined in 49 CFR 18.25(b), shall be shown and deducted to determine the net costs on which the FHWA share will be based, unless an alternative is specified in the Federal-Aid Project Agreement.

(c) Audits shall be performed in accordance with 49 CFR 18.26 and 23 CFR part 12.

(d) Equipment purchased by the SHAs and their subgrantees with FHWA highway planning and research funds shall be used, managed, and disposed of in accordance with 49 CFR 18.32(b).

(e) Acquisition and disposition of supplies acquired by the SHAs and their subgrantees with FHWA highway planning and research funds shall be in accordance with 49 CFR 18.33.

(f) SHAs and their subgrantees may copyright any books, publications, or other copyrightable materials developed in the course of or under the FHWA highway planning and research funded project. However, in accordance with 49 CFR 18.34, the FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(g) Procedures for the procurement of property and services with FHWA highway planning and research funds by the SHAs and their subgrantees shall be in accordance with 49 CFR 18.36(a) and, if applicable, (t). The SHAs shall follow State laws and procedures when awarding and administering subgrants to MPOs and local governments and shall ensure that the requirements of 49 CFR 18.37(a) have been satisfied. The SHAs and their subgrantees shall not use FHWA funds for procurements from persons (as defined in 49 CFR 29.100) who have been debarred or suspended in accordance with the provisions of 49 CFR part 29, subparts A to E.

(h) Recordkeeping retention requirements shall be in accordance with 49 CFR 18.42.

(i) The SHAs and their subgrantees are subject to the provisions of 37 CFR part 401 governing patents and inventions.

(j) In accordance with the provisions of 49 CFR part 29, subpart F, SHAs shall certify to the FHWA that they will provide a drug free workplace. This requirement can be satisfied through the annual certification for the Federal-aid highway program.

(k) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities are applicable to all tiers of recipients of FHWA highway planning and research funds.

(l) The provisions of 49 CFR part 21, with respect to title VI of the Civil Rights Act of 1964, shall apply to all highway planning and research activities supported with FHWA funds.

(m) The SHAs shall administer the planning and research program(s) consistent with their overall efforts to im-

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plement section 106(c) of the 1987 STURAA (Pub. L. 100-17, 101 Stat. 132) and 49 CFR part 23 regarding business concerns owned and controlled by socially and economically disadvantaged individuals as defined by 15 U.S.C. 637(d).

Subpart B—[Reserved]

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

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450.102 Applicability.
450.104 Definitions.
450.106 Metropolitan planning organization.
450.108 Urban transportation planning process: Funding.
450.110 Urban transportation planning process: Products.
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Subpart B—Transportation Improvement Program

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450.202 Applicability.
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450.206 Annual (or biennial) element: Project selection.
450.208 Annual (or biennial) element: Content.
450.210 Selection of projects for implementation.
450.212 Program approval.

Subpart A—Urban Transportation Planning

AUTHORITY: 23 U.S.C. 104(f)(3), 134 and 315; secs. 3, 5, 8, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1607, 1607a, and 1607a-1); secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

SOURCE: 48 FR 30339, June 30, 1983, unless otherwise noted.

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and section 8 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1607), which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area. These plans and programs support transportation improvements and subsequent project development activities in the area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) As used in this part:

(1) *Governor* means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

(2) *Designated section 9 recipient* means that organization designated in accordance with section 9(m) or 5(b)(1) of the UMT Act, as amended, as being responsible for receiving and dispensing section 9 and/or section 5 funds.

(3) *Metropolitan planning organization* means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of sections 3(e)(1), 5(l), 8 (a) and (c) and 9(e)(3)(G) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), 1607 (a) and (c) and 1607a(e)(3)(G)). The metropolitan planning organization is the forum for cooperative transportation decision-making.

(4) *Annual (or biennial) element* means a list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period.

(5) *Transportation improvement program (TIP)* means a staged multiyear program of transportation im-

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provements including an annual (or biennial) element.

§ 450.106 Metropolitan planning organization.

(a) Designation of a metropolitan planning organization shall be made by agreement among the units of general purpose local government and the Governor. To the extent possible, only one metropolitan planning organization should be designated for each urbanized area or group of contiguous urbanized areas.

(b) Principal elected officials of general purpose local governments shall be represented on the metropolitan planning organization to the extent agreed to pursuant to paragraph (a) of this section.

§ 450.108 Urban transportation planning process: Funding.

(a) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the metropolitan planning organization, as required by 23 U.S.C. 104(f)(3).

(b) Funds authorized by section 8 of the UMT Act (49 U.S.C. 1607) shall be made available to the metropolitan planning organization, to the extent possible, in urbanized areas with populations of 200,000 or more or where the metropolitan planning organization represents a group of contiguous or related urbanized areas with an aggregate population of 200,000 or more. In urbanized areas with populations below 200,000, such funds shall be made available to the State, at the State's option, to allocate among such urbanized areas, or, with respect to any given urbanized area, to use for the benefit of such area with the concurrence of the metropolitan planning organization. If the State does not elect this option, these funds shall be made available directly to the metropolitan planning organization, to the extent possible.

(c) In urbanized areas with populations of 200,000 or more, the State, metropolitan planning organization, and designated section 9 or 9A funds recipient, where section 9 or 9A funds are used for planning purposes, shall develop a unified planning work program (UPWP) which describes urban transportation and transportation related planning activities anticipated in the area during the next 1- or 2-year period including the planning work to be performed with Federal planning assistance and with funds available under section 9 or 9A, if any. The UPWP shall be endorsed by the metropolitan planning organization.

(d) In urbanized areas with populations below 200,000, the State and the metropolitan planning organization (and where section 9 or 9A funds are to be used for planning, the designated recipient) shall cooperatively describe and document how Federal planning funds and funds available under section 9 or 9A if any, would be expended for planning in each area, who would do the work and what work in general would be done. The work proposed shall be endorsed by the metropolitan planning organization.

(e) The staff resources of other agencies (such as the State, local government and transit operator staff) may be utilized where appropriate to carry out the planning process, including the activities funded with Federal planning funds, through contractual agreements.

(Reporting and recordkeeping requirements in paragraph (c) have been approved by the Office of Management and Budget under control number 2132-0031)

§ 450.110 Urban transportation planning process: Products.

The urban transportation planning process shall include the development of:

(a) A transportation plan describing policies, strategies and facilities or changes in facilities proposed. The transportation plan shall be formulated according to the requirements of 23 U.S.C. 134 and section 8 of the UMT Act (49 U.S.C. 1607) which include and analysis of transportation system management strategies to make more efficient use of existing transportation systems.

(b) A transportation improvement program (TIP) including an annual (or biennial) element as prescribed in subpart B of this part. The program shall be a staged multiyear program of transportation improvement projects

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consistent with the tranportation plan.

(c) Other planning and project development activities deemed necessary by State and local officials to assist in addressing transportation issues in the area.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 2132-0529)

§ 450.112 Urban transportation planning process: Participant responsibilities.

(a) The metropolitan planning organization, the State, and publicly owned operators of mass transportation services shall determine their mutual responsibilities in the development of the planning work program, transportation plan and TIP specified in §§ 450.108 and 450.110.

(b) The metropolitan planning organization shall endorse the transportation plan and TIP required by §§ 450.110 and 450.204. These endorsements are prerequisites for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), section 8(c) of the UMT Act (49 U.S.C. 1607(c)), and subpart B of this part.

§ 450.114 Urban transportation planning process: Certification.

(a) The urban transportation planning process shall include activities to support the development and implementation of a transportation plan and TIP/annual (or biennial) element and subsequent project development activities, including the environmental impact assessment process. These activities shall be included as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems.

(b) The planning process shall be consistent with:

(1) Sections 8(e) and 3(e) (49 U.S.C. 1607 and 1602(e)) of the UMT Act concerning involvement of the appropriate public and private transportation providers;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794.

(3) Section 105(f) of the Surface Transportation Assistance Act of 1982 regarding the involvement of minority business enterprises in FHWA and UMTA funded projects (Pub. L. 97-424, section 105(f); 49 CFR part 23); and

(4) Section 16 of the UMT Act 49 U.S.C. 1612), section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR part 27, which call for special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons.

(c) At the time the TIP/annual (or biennial) element is submitted, the State and the metropolitan planning organization shall certify that the planning process is being carried on in conformance with all applicable requirements of:

(1) 23 U.S.C. 134, section 8 of the UMT Act (49 U.S.C. 1607) and these regulations;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d)).

Subpart B—Transportation Improvement Program

AUTHORITY: 23 U.S.C. 105, 134(a), and 135(b); secs. 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c); secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

SOURCE: 48 FR 30340, June 30, 1983, unless otherwise noted.

§ 450.200 Purpose.

The purpose of this subpart is to establish regulations for the development, content, and processing of a cooperatively developed transportation improvement program (TIP) in urbanized areas.

§ 450.202 Applicability.

(a) The provisions of this subpart shall be applicable to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban system projects);

(2) 23 U.S.C. 103(e)(4) (Interstate substitution projects);

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(3) Sections 3, 5, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602, 1604, 1607a and 1607a-1) (UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart

(5) 23 U.S.C. 104(b)(5) (A) and (B) (projects on the Interstate System), except as provided in this subpart.

(6) 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), except as provided in this subpart.

(b) Projects under paragraphs (a) (4), (5) and (6) of this section which are for resurfacing, restoration, rehabilitation, reconstruction (4R), or highway safety improvement; and which will not alter the functional traffic capacity or capability of the facility being improved may be excluded from the TIP including its annual (or biennial) element by agreement between the State and the metropolitan planning organization.

§ 450.204 Transportation improvement program: General.

(a) The TIP, including the annual (or biennial) element, shall be developed by the metropolitan planning organization, the State and publicly owned operators of mass transportation services in cooperation with recipients authorized under sections 5, 9, or 9A of the UMT Act (49 U.S.C. 1604, 1607a or 1607a-1).

(b) The TIP shall as a minimum: (1) Consist of improvements from the transportation plan developed under § 450.110(a) and recommended for Federal funding during the program period;

(2) Cover a period of not less than 3 years;

(3) Indicate the area's priorities; and

(4) Include realistic estimates of the total costs and revenues for the program period.

(c) The metropolitan planning organization endorsement of the TIP including the annual (or biennial) element is a prerequisite for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), and section 8(c) of the UMT Act (49 U.S.C. 1607(c)). The State, metropolitan planning organization, and publicly owned operators of mass transportation services are encouraged to develop simplified procedures for updating or modifying an endorsed annual (or biennial) element.

(d) The TIP including the annual (or biennial) element shall be submitted:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator for use as a basis for meeting the applicable air quality procedures contained in 23 CFR part 770 and for the subsequent approval of the statewide program of projects under 23 U.S.C. 105 in accordance with § 450.212 and 23 CFR part 630.

§ 450.206 Annual (or biennial) element: Project selection.

(a) Federally funded projects shall be selected for inclusion in the annual (or biennial) element at all phases in the development of the transportation improvement for which program action is proposed. The projects to be included in the annual (or biennial) element of the TIP shall be selected in accordance with:

(1) State and local law;

(2) 23 U.S.C. 105(d) regarding the selection of urban system projects by the appropriate local officials with concurrence of the State highway department;

(3) 23 U.S.C. 103(e)(4) and 23 CFR part 476 regarding the selection of Interstate substitution projects by the responsible local officials; and

(4) Procedures acceptable to the State highway department, the metropolitan planning organization, and local public transit operating officials.

(b) The endorsement of the annual (or biennial) element of the TIP by the metropolitan planning organization constitutes the selection of the projects by local officials pursuant to 23 U.S.C. 105(d) and 23 U.S.C. 103(e)(4).

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§ 450.208 Annual (or biennial) element: Content.

(a) Except as provided in § 450.210(b)(3) and (4), the annual (or biennial) element shall contain projects selected under § 450.206 and endorsed under § 450.204.

(b) With respect to each project under paragraph (a) of this section the annual (or biennial) element shall include:

(1) Identification of the projects, including the phase of phases proposed for implementation.

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program period.

(3) Proposed source of Federal and non-Federal matching funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal funding that are not considered to be of appropriate scale for individual inclusion in the annual (or biennial) element may be grouped by functional classification, geographic area or work type.

(d) The annual (or biennial) element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual (or biennial) element and proposed for funding under sections 5, 9, or 9A of the UMT Act (49 U.S.C. 1604, 1607a and 1607a-1) may not exceed apportioned section 5, 9, or 9A funds available to the urbanized area during the program year (or 2 years).

§ 450.210 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under sections 3, 5, 9 and 9A of the UMT Act (49 U.S.C. 1602, 1604, 1607a and 1607a-1) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual (or biennial) element of the TIP submitted to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the annual (or biennial) element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which the State concurs): provided, however, that in case any where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects.

(2) Those projects drawn from the annual (or biennial) element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), in which it concurs;

(3) Those projects not drawn from the annual (or biennial) element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid highway urban system), 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Projects on the Interstate System) provided that:

(i) Previous phases of such project or projects were selected pursuant to § 450.206, and advanced;

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded; and

(iii) A statement accompanies the statewide program of projects which includes for such projects the views of the metropolitan planning organization and indicates how the requirements of 23 U.S.C. 134(a) have been met; and

(4) Those projects not drawn from the annual (or biennial) element that were excluded under § 450.202(b) and are proposed to be implemented.

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(c) The preparation and endorsement of the TIP, the selection of projects in accordance with this subpart, and the agreement under § 450.202(b), if any, will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a) and section 8(c) of the UMT Act (49 U.S.C. 1607(c)).

(d) The State shall notify the appropriate metropolitan planning organizations of the 23 U.S.C 105 program actions taken on projects in each urbanized area.

§ 450.212 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the planning process is in conformance with subpart A, programs of projects and Interstate Substitution projects selected for implementation under §§ 450.210 and 450.206, respectively will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual (or biennial) element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under sections 3, 5, 9, and 9A of the UMT act (49 U.S.C. 1602, 1604, 1607a and 1607a-1) included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.204(d)(1).

(4) Federal-aid urban extensions of primary projects, Interstate projects and highway bridge replacement and rehabilitation projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR part 630, subpart A. These approvals will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the projects are based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart. These approvals will constitute:

(1) The approval required under section 8(c) of the UMT Act (49 U.S.C. 1607(c));

(2) A finding that the program is based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified officially coordinated urban transportation sytem in accordance with the provisions of section 3(e)(1), 5(l), or 8(c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP in accordance with procedures in 49 CFR part 623.

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PART 460—PUBLIC ROAD MILEAGE FOR APPORTIONMENT OF HIGHWAY SAFETY FUNDS

Sec.
460.1 Purpose.
460.2 Definitions.
460.3 Procedures.

AUTHORITY: 23 U.S.C. 315, 402(c); 49 CFR 1.48.

SOURCE: 40 FR 44322, Sept. 26, 1975, unless otherwise noted.

§ 460.1 Purpose.

The purpose of this part is to prescribe the policies and procedures followed in identifying and reporting public road mileage for utilization in the statutory formula for the apportionment of highway safety funds under 23 U.S.C. 402(c).

§ 460.2 Definitions.

As used in this part:

(a) *Public road* means any road under the jurisdiction of and maintained by a public authority and open to public travel.

(b) *Public authority* means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality thereof, with authority to finance, build, operate or maintain toll or toll-free highway facilities.

(c) *Open to public travel* means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

(d) *Maintenance* means the preservation of the entire highway, including surfaces, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization.

(e) *State* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, *State* and *Governor of a State* include the Secretary of the Interior.

§ 460.3 Procedures.

(a) *General requirements.* 23 U.S.C. 402(c) provides that funds authorized to carry out section 402 shall be apportioned according to a formula based on population and public road mileage of each State. Public road mileage shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State or his designee and subject to the approval of the Federal Highway Administrator.

(b) *State public road mileage.* Each State must annually submit a certification of public road mileage within the State to the Federal Highway Administration Division Administrator by the date specified by the Division Administrator. Public road mileage on Indian reservations within the State shall be identified and included in the State mileage and in computing the State's apportionment.

(c) *Indian reservation public road mileage.* The Secretary of the Interior or his designee will submit a certification of public road mileage within Indian reservations to the Federal Highway Administrator by June 1 of each year.

(d) *Action by the Federal Highway Administrator.* (1) The certification of Indian reservation public road mileage, and the State certifications of public road mileage together with comments thereon, will be reviewed by the Federal Highway Administrator. He will make a final determination of the public road mileage to be used as the basis for apportionment of funds under 23 U.S.C. 402(c). In any instance in which the Administrator's final determination differs from the public road mileage certified by a State or the Secretary of the Interior, the Administrator will advise the State or the Secretary of the Interior of his final determination and the reasons therefor.

(2) If a State fails to submit a certification of public road mileage as required by this part, the Federal Highway Administrator may make a deter-

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mination of the State's public road mileage for the purpose of apportioning funds under 23 U.S.C. 402(c). The State's public road mileage determined by the Administrator under this subparagraph may not exceed 90 percent of the State's public road mileage utilized in determining the most recent apportionment of funds under 23 U.S.C. 402(c).

PART 470—HIGHWAY SYSTEMS

Subpart A—Federal-Aid Highway Systems

Sec.
470.101 Purpose.
470.103 Definitions.
470.105 System classification.
470.107 General procedures.
470.109 Specific systems procedures.
470.111 Reclassifications, deletions, and reinstatements.
470.113 Proposals for system actions.
470.115 Approval authority.
470.117 Realignment schedule.

APPENDICES TO SUBPART A

APPENDIX A—FLORIDA (NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS)
APPENDIX B—PRIMARY FEDERAL-AID SYSTEM
APPENDIX C—URBANIZED FEDERAL-AID URBAN SYSTEM

Subpart B—[Reserved]

Subpart C—Priority Primary Routes—Route Selection and Approval Procedures

470.301 Purpose.
470.303 Definitions.
470.305 Route selection.
470.307 Route approvals.

Subpart A—Federal-Aid Highway Systems

AUTHORITY: 23 U.S.C. 103(b)(2), 103(c)(2), 103(d)(2), 103(e)(1), 103(e)(3), 103(f), and 315; 49 CFR 1.48(b)(2) and (b)(35), unless otherwise noted.

SOURCE: 40 FR 42344, Sept. 12, 1975, unless otherwise noted. Redesignated at 41 FR 51396, Nov. 22, 1976.

§ 470.101 Purpose.

This regulation sets forth policies and procedures relating to the designation of the National System of Interstate and Defense Highways, the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system after June 30, 1976.

§ 470.103 Definitions.

(a) Except as otherwise provided herein, terms defined 23 U.S.C. 101(a) are used in this regulation as so defined.

(b) As used herein:

(1) *Urban area* means an urbanized area, or in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

(2) *Rural area* means all areas of a State not included in the boundaries of urban areas.

(3) *Public road* means any road under the jurisdiction of and maintained by a public authority and open to public travel.

(4) *Rural arterial routes* means those public roads that are functionally classified as a part of the rural principal arterial system or the rural minor arterial system as described in volume 20, appendix 12, Highway Planning Program Manual.[1]

(5) *Rural major collector routes* means those public roads that are functionally classified as a part of the major collector subclassification of the rural collector system as described in volume 20, appendix 12, Highway Planning Program Manual.

(6) *Urban arterial routes* means those public roads that are functionally classified as a part of the urban principal arterial system or the urban minor arterial system as described in volume 20, appendix 12, Highway Planning Program Manual.

(7) *Urban collector routes* means those public roads that are functionally classified as a part of the urban col-

[1]The Highway Planning Program Manual is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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lector system as described in volume 20, appendix 12, Highway Planning Program Manual.

(8) *Appropriate local officials* means: (i) In urbanized areas, principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization designated by the Governor, or (ii) in rural areas and urban areas not within any urbanized area, principal elected officials of general purpose local governments.

(9) For purposes of the above definition, the term *Governor* includes the Mayor of the District of Columbia; and the term *Metropolitan Planning Organization* means that organization designated by the Governor as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of 49 U.S.C. 1602(a)(2) and (e)(1), 49 U.S.C. 1603(a), and 49 U.S.C. 1604(g)(1) and 1604(1). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local governments.

(10) *Control area* as it pertains to the Interstate System, means a metropolitan area, city or industrial center, a topographic feature such as a major mountain pass, a favorable location for a major river crossing, a road hub which would result in material traffic increments on the Interstate route, a place on the boundary between two States agreed to by the States concerned, or other similar point of significance.

§ 470.105 System classification.

(a) The National System of Interstate and Defense Highways shall consist of routes of highest importance to the Nation, which connect as direct as practicable the principal metropolitan areas, cities, and industrial centers, including important routes into, through, and around urban areas, serve the national defense and, to the greatest extent possible, connect at suitable border points with routes of continental importance in Canada and Mexico.

(b) The Federal-aid primary system shall consist of an adequate system of connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into or through urban areas.

(c) The Federal-aid secondary system shall consist of rural major collector routes.

(d) The Federal-aid urban system shall consist of arterial routes and collector routes, exclusive of urban extensions of the Federal-aid primary system.

§ 470.107 General procedures.

(a) *Area classification.* (1) All areas of a State shall be classified as either rural or urban in accordance with the definitions in § 470.103(b) (1) and (2) of this regulation.

(2) Urban area boundaries shall be established in accordance with Volume 4, Chapter 6, Section 3 of the Federal-Aid Highway Program Manual.[2]

(b) *Functional classification.* (1) The routes of the Federal-aid primary, secondary, and urban system shall be designated on the basis of their anticipated functional usage.

(2) The State highway agency shall have the primary responsibility for initially developing and periodically updating a statewide highway functional classification to determine anticipated functional usage. The State shall cooperate with appropriate local officials, or appropriate Federal agency in the case of areas under Federal jurisdiction, in developing and updating the functional classification.

(3) The results of the functional classification shall be submitted to the Federal Highway Administration (FHWA) for approval and when approved shall serve as an official document for designation of Federal-aid systems. The State highway agency's submittal shall include highway maps showing the functional systems, statistics regarding the mileage extent of the functional systems, and a statement that the functional classification was developed in cooperation with ap-

[2] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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propriate local officials or appropriate Federal agency in the case of areas under Federal jurisdiction.

(c) *Designation of Federal-aid systems.* (1) The routes of the Interstate System to the greatest extent possible, shall be designated by the State highway agency or by joint action of the State highway agencies where the routes involve State-line connections. Interstate routes may be designated in both rural and urban areas.

(2) The routes of the Federal-aid primary system shall be designated by each State acting through its State highway agency. Federal-aid primary routes may be designated in both rural and urban areas.

(3) The routes of the Federal-aid secondary system shall be designated by each State acting through its State highway agency and appropriate local officials in cooperation with each other. No Federal-aid secondary route shall be designated in urban areas.

(4) The routes of the Federal-aid urban system shall be designated by appropriate local officials with the concurrence of the State highway agencies. The Federal-aid urban systems shall be designated in each urbanized area and such other urban areas as the State highway agency may designate. No Federal-aid urban system route shall be designated in rural areas.

(5) In urbanized areas, the designation of Federal-aid routes shall be in accordance with the planning process required pursuant to the provisions of 23 U.S.C. 134(a).

(6) In areas under Federal jurisdiction, the designation of Federal-aid routes shall be coordinated with the appropriate Federal agency.

(7) The modification or revision of Federal-aid systems shall be carried out in accordance with the above provisions for the designation of Federal-aid systems.

(d) *Extent of systems.* (1) The Interstate System shall not exceed 42,500 miles under the statutory provisions of 23 U.S.C. 103(e)(1) and 103(e)(3).[3]

(2) The Federal-aid primary, secondary, and urban systems do not have a statutory limit on designated mileage, but these systems are limited in extent to the functional arterial and collector routes prescribed in § 470.105 (b), (c), and (d) of this regulation.

(e) *Designation of partial systems.* Although the State highway agencies and appropriate local officials are encouraged to designate all routes eligible for Federal-aid system designation in the approved statewide functional classification, all of the eligible functional routes need not be designated as a part of the Federal-aid systems. Where this is the case, the designation of eligible functional routes should adhere to the following principles:

(1) In each system, routes should be designated on the basis of a planned connected system as specified in § 470.107(f).

(2) System mileage should be distributed on a reasonable and fair basis within the geographic area the system is designed to serve.

(f) *Integration of systems.* All Federal-aid systems shall be properly integrated with each Federal-aid route connected to another Federal-aid route.

(1) Interstate routes should connect to other Interstate routes at each end with the exception of Interstate routes that connect with continental routes at international boundaries or terminate in urban areas that are not served by another Interstate route. In the latter case, the terminus of the Interstate route should connect to routes of the Federal-aid primary or urban systems.

(2) Interstate spur routes may be justified in some instances such as connections to major cities, transportation terminals, defense centers, and industrial centers not directly served by the Interstate through routes. Interstate spur routes may connect to routes of the Federal-aid primary and urban systems.

(3) Federal-aid primary routes should connect at each end to routes of the Federal-aid Interstate or pri-

[3] Although not included in this regulation, limited additions to the 42,500-mile Interstate System are permitted under the provisions of 23 U.S.C. 103(e)(2) and 139 (a) and (b).

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mary systems with the exception of routes that connect at international boundaries or terminate in urban areas. In the latter case, the terminus of the Federal-aid primary route may also connect to routes of the Federal-aid urban system.

(4) Federal-aid primary spur routes may be justified in some instances such as connections to important cities, transportation terminals, defense centers, industrial centers, and recreational areas not directly served by the Federal-aid primary through route. Federal-aid primary spur routes may connect to routes of the Federal-aid secondary and urban systems.

(5) Where feasible, Federal-aid secondary routes should connect at each end to routes of the Federal-aid Interstate, primary, secondary, or urban systems.

(6) Federal-aid secondary routes should connect to other secondary routes at State and county lines except in unusual circumstances where to do so may penalize or impose a hardship on a State or county.

(7) Federal-aid secondary stub routes are permissible as routes reach outward from other Federal-aid routes to serve traffic generators of intracounty importance.

(8) Where feasible, Federal-aid urban system routes should connect at each end to routes of the Federal-aid Interstate, primary, secondary, or urban systems.

(9) Stub routes on the Federal-aid urban systems are permissible at urban area boundaries and as Federal-aid urban system routes reach out from other Federal-aid routes to directly serve major centers of urban activity as well as local traffic generators such as residential neighborhoods, transportation terminals, and commercial and industrial areas.

(10) Individual routes or clusters of routes in widely separated or remote areas of a State (as in Aiaska), and on offshore islands, are permissible without connections to other segments of the system if the routes are otherwise, justified.

(g) *Federal-aid route numbers.* A route number shall be assigned to each Federal-aid route. The route number shall not exceed four digits, but it may contain less than four digits.

(h) *Federal-aid system maps.* (1) All Federal-aid systems shall be delineated on county and urban areas maps.

(2) Each Federal-aid system shall be identified on the maps by different map symbol, and each Federal-aid route shall be identified by route number.

(23 U.S.C. 315; 49 CFR 1.48(b))

[40 FR 42344, Sept. 12, 1975. Redesignated at 41 FR 51396, Nov. 22, 1976, and amended at 43 FR 38384, Aug. 28, 1978]

§ 470.109 Specific systems procedures.

(a) *Interstate system.* (1) Proposals for system actions on the Interstate System shall include a route description as illustrated in appendix A.

(2) Proposals shall include a Federal-aid system map or maps, as prescribed in § 470.107(h) with the control areas and the affected Interstate routes marked thereon.

(3) Proposals should include a statement justifying control areas, a statement indicating agreement with adjoining States on State-line connections, and a statement providing total route mileage classified by rural and urban.

(4) Existing documentation in effect on June 30, 1976, for the Interstate System will remain effective on and after July 1, 1976. Proposals for system actions on the Interstate System after June 30, 1976, will be in accordance with the provisions of this regulation.

(b) *Federal-aid primary system.* (1) Proposals for system actions on the Federal-aid primary system shall include a brief route description and related information as illustrated in appendix B.

(2) Proposals shall include a Federal-aid system map or maps as prescribed in § 470.107(h).

(3) All routes on the Interstate System are a part of the Federal-aid primary system.

(c) *Federal-aid secondary system.* (1) Proposals for the Federal-aid secondary system shall include a brief route description and related information as illustrated in appendix B.

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(2) Proposals shall include a Federal-aid system map or maps as prescribed in § 470.107(h).

(d) *Federal-aid urban system.* (1) Proposals for the Federal-aid urban system shall include a table listing each route by number, name, termini, and related information as illustrated in appendix C.

(2) Proposals for the Federal-aid urban system shall include a Federal-aid system map or maps, as prescribed in § 470.107(h) with the urban area boundaries delineated thereon.

(23 U.S.C. 315; 49 CFR 1.48(b))

[40 FR 42344, Sept. 12, 1975. Redesignated at 41 FR 51396, Nov. 22, 1976, and amended at 43 FR 38384, Aug. 28, 1978]

§ 470.111 Reclassifications, deletions, and reinstatements.

(a) The reclassification and redesignation of a Federal-aid highway route from one Federal-aid system to another Federal-aid system shall not relieve the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects or of any other obligation included in project agreements executed for Federal-aid projects on portions of that route. When controlled access Federal-aid primary routes are transferred to the Federal-aid secondary system, all access control features should be retained in force unless a request by the State to the contrary is approved by the FHWA.

(b) Federal Highway Administration approval of a deletion of a route from any Federal-aid system, without reclassification and redesignation to another Federal-aid system, shall relieve the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects with the exception of defense access-road projects constructed under the provisions of Volume 6, Chapter 9, Section 5 of the Federal-Aid Highway Program Manual. Such deletion shall also relieve the State of any other obligations included in project agreements executed for Federal-aid projects on portions of the deleted route.

(c) Requests for reinstatement of routes previously deleted from any Federal-aid system shall be approved by FHWA only when the State expressly agrees to resume its obligation for the maintenance of any portion of the route previously constructed as a Federal-aid project. Resumption of any other obligations included in project agreements executed for Federal-aid projects on the route being considered for reinstatement shall be mutually agreed to by the State and the FHWA.

§ 470.113 Proposals for system actions.

(a) The State highway agencies shall have the responsibility for proposing to the Federal Highway Administration all official actions regarding the designation, modification, or revision of Federal-aid highway systems.

(b) In justification of a proposed system action, the State highway agency shall include a statement that the proposed system action is in conformance with: (1) The system classification, general procedures, and specific procedures of this regulation; (2) the requirements for participation with appropriate local officials; and (3) in urbanized areas the planning process required pursuant to the provisions of 23 U.S.C. 134(a).

§ 470.115 Approval authority.

(a) The Federal Highway Administrator will approve system actions involving the designation, modification, or revision of the Interstate System including control areas and route numbers.

(b) The Federal Highway Administration's Division Administrator will approve the statewide functional classification and system actions involving the designation, modification, and revision of the Federal-aid primary, secondary, and urban systems.

§ 470.117 Realignment schedule.

The effective date for realignment of the Federal-aid primary, secondary, and urban systems shall be July 1, 1976.

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APPENDICES TO SUBPART A

APPENDIX A—FLORIDA

[National system of interstate and defense highways]

FAI Route No.	Description
10	From the Florida-Alabama State line northwest of Pensacola via vicinity of Pensacola, Marianna, Tallahassee, and Lake City to FAI Route 95 in Jacksonville.
95	From Miami via vicinity of West Palm Beach, Daytona Beach, and Jacksonville to Florida-Georgia State line north of Jacksonville.
110	From FAI Route 10 north of Pensacola southerly into Pensacola.

NOTE: Mileage data are not to be shown on this form.

APPENDIX B—PRIMARY FEDERAL-AID SYSTEM

[State: Alpha]

Route Number		Route description and termini	County	Mileage [1]			
Fed. aid	State or local			Rural	Urban-ized	Small urban	Total
1	S.R.1	From the California-Nevada State line southwest of Verdi via Reno, Fernley, Lovelock, Winnemucca, Battle Mountain, Elko, and Wells to the Nevada-Utah State line at Wendover, Utah, with a spur from FAP Route 1 southerly along 17th St. to FAS Route 705 (Glendale Rd.) in Sparks. Approved Jan. 1, 1964, revised Dec. 7, 1964.	Washoe	41.5	5.4		46.9
			Storey	.2			.2
			Lyon	16.3			16.3
			Churchill	27.7			27.7
			Pershing	75.0			75.0
			Humboldt	61.3			61.3
			Lander	26.8			26.8
			Eureka	26.4			26.4
			Elko	131.3		3.2	134.5
			Total	406.5	5.4	3.2	415.1
2	C.R. and State Routes 2, 2a, 3, 19, and 24.	From the California-Nevada State line southwest of Glenbrook via Carson City, Dayton, Leeteville, Fallon, Austin, Eureka, and Ely to a junction with FA Route 1 near Wendover, Utah. Approved Jan. 1, 1964, revised July 27, 1967.	Churchill	104.8			104.8
			Douglas	15.3			15.3
			Elko	53.2			53.2
			Eureka	47.4			47.
			Lander	59.0			59.0
			Lyon	35.3			35.3
			Ormsby	14.4		2.0	16.4
			White Pine	132.7			132.7
			Total	462.1		2.0	464.1
3	S.R. 3, 1, 70 and local road.	From the California-Nevada State line at Topez Lake via Minden to a point on FA Route 2 south of Carson City via Reno to the Nevada-California State line northwest of Reno, with a spur in Reno from FAM Route 3 via East Plumb Lane to the Reno Municipal Airport. Approved Jan. 1, 1964, revised Aug. 25, 1965.	Douglas	34.1			34.1
			Ormsby	3.4		9.8	4.2
			Washoe	34.2	6.9		41.1
			Total	71.7	6.9	0.8	79.4

[1] For routes extending into or through 2 or more counties, show the mileage separately for each county. Show grand total for the system on last sheet.

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APPENDIX C—URBANIZED FEDERAL-AID URBAN SYSTEM

[State: Alpha. Urban Area: Beta.]

Rte. No.	Street name	Termini		County	Mileage [1]	Map No. [2]
		From	To			
7875	Meridian St	Troy Ave. (S-141)	Maryland St. (U-6399)	Marion	3.3	4
7878	86th St., 82d St., and Shadeland Ave.	Zionville Rd., (S-224), I-65, and 56th St..	I-465 and 56th St. Interchange.	do	1.1	4
A879	Fall Creek Parkway, East Dr. and 10th St.	White River Parkway, West Dr. (U-6393).	Shadeland Ave. (U-6234).	do	3.2	4
A999	Stop 11 Rd., Connection to Southport Rd. and Shelbyville Rd.	Southport Rd. (S-150)	Franklin Rd. (S-149)	do	.2	6
2010	State Rd. 37	38th St. (F-3)	I-465	Dover	1.7	5
				Marion	2.0	5, 6
7554	CBD GRID			do		1
	Laurel St	North Harbor Dr	6th Ave		.6	
	Hawthorn St	I-5	6th Ave		.6	
	Grape St	I-5	6th Ave		.6	
	Ash St	North Harbor Dr	10th St		.9	
	A St	Bettner Blvd	Park Blvd		.9	
	B St	4th St	18th St		1.7	
	C St	Front St	18th St		.8	
	F St	Pacific Highway	18th St		.9	
	G St	Pacific Highway	18th St		.9	
	Front St	Market St	18th St		1.3	
	Bettner St	A St	Ash St		.4	
	12th St	Market St	East St		.9	

[1] If route extends into more than 1 county, show mileage separately for each county. Show sum of route mileage on the last sheet for the urban area.

[2] For an urban area requiring 2 or more maps, show the map number(s) on which the route is located.

Subpart B—[Reserved]

Subpart C—Priority Primary Routes—Route Selection and Approval Procedures

AUTHORITY: 23 U.S.C. 147 and 315; 49 CFR 1.48(b)(28) and (35).

SOURCE: 39 FR 37637, Oct. 23, 1974, unless otherwise noted.

§ 470.301 Purpose.

The purpose of this directive is to prescribe the procedures for selection and approval of priority primary routes.

§ 470.303 Definitions.

For the purposes of this subpart the following definitions apply:

(a) *Priority Primary Routes* means high traffic sections of highways on the Federal-aid primary system which connect to the Interstate System and are selected for priority of improvement to supplement the service provided by the Interstate System by furnishing needed adequate traffic collector and distributor facilities.

(b) *Appropriate local officials* means: (1) In rural and urban areas under 50,000 population, principal selected officials of general purpose local governments; or

(2) In urbanized areas, principal elected officials of general purpose local governments (and until January 2, 1975, the Commissioner of the District of Columbia), acting through the metropolitan planning organization designated by the Governor.

§ 470.305 Route selection.

(a) The State highway department, in consultation with appropriate local officials, shall select priority primary routes.

(b) Priority primary routes shall connect to the Interstate System at one or more points either directly or in combination with another priority primary route. Priority primary routes shall satisfy all provisions of 23 U.S.C. 103(b)(1) regarding the existing Federal-aid primary system. After June 30, 1976, priority primary routes shall satisfy all provisions of 23 U.S.C. 103(b)(2) regarding realinement of the

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Federal-aid primary system on the basis of anticipated functional usage.

§ 470.307 Route approvals.

The FHWA Division Administrator in each State is authorized to approve priority primary routes.

[41 FR 51396, Nov. 22, 1976]

PART 476—INTERSTATE HIGHWAY SYSTEM

Subpart A—General

Sec.
476.2 Definitions.

Subparts B—C [Reserved]

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit or Highway Projects or Both

476.300 Purpose.
476.302 Applicability.
476.304 Withdrawal request.
476.306 Withdrawal approval.
476.308 Concept approval for substitute projects.
476.310 Proposals for substitute public mass transit and highway projects.
476.312 Combined proposal.
476.314 Administrator's review and approval of substitute projects.

AUTHORITY: 23 U.S.C. 103(e)(2), 103(e)(4), 103(g), 103(h) and 315; 49 CFR 1.48(b) and 1.50(f).

Subpart A—General

§ 476.2 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) The following terms, where used in the regulations in this part, have the following meaning:

(1) *Base cost year* for the latest Interstate System cost estimate approved by Congress shall be the calendar year specified in the Interstate Cost Estimate Manual [1] for that estimate. For example, the base cost year for the 1972 estimate is 1970.

(2) *Concurrence* means written agreement which is currently binding on the concurring party and which addresses the specific proposal being submitted for approval.

(3) *Governor* means the Governor of any one of the fifty States and the Mayor of the District of Columbia. It also refers to any State or local entity specifically designated by the Governor for the purpose of executing any of his/her responsibilities under this part.

(4) *Interstate segment* means any designated, toll-free route, or portion thereof, of the Interstate System.

(5) *Local governments concerned* means local units of general purpose government under State law within whose jurisdiction the Interstate segment lies, or is to be withdrawn.

(6) *Open to traffic* means a segment which has been constructed or has had major improvements with Federal-aid Interstate funds and open to normal Interstate traffic; or a segment which was an existing freeway, meeting acceptable Interstate geometric standards and recognized as the final location of the route, when incorporated into the System. *Open to traffic* does not mean a segment of existing highway that is ultimately planned to be replaced by an entirely new facility.

(7) *Responsible local officials* means:

(i) In urbanized areas, principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization in accordance with part 450, subpart A of this title, and;

(ii) In rural areas and urban areas not within any urbanized area, principal elected officials of general purpose local governments.

(8) *Substitute highway project* means any undertaking for highway construction, which may encompass phases of work including preliminary engineering, right-of-way, and actual construction, individually or any combination thereof, on any of the Federal-aid systems described in 23 U.S.C.

[1] The "Instructional Manual for the Preparation and Submission of the (Year) Estimate of the Cost of Completing the Interstate System in Accordance with section 104(b)(5) of title 23 U.S.C., Highways," published by the Federal Highway Administration, U.S. Department of Transportation, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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103 and which is eligible for Federal financial assistance under title 23, U.S.C. A substitute highway project may include the construction of exclusive or preferential bus lanes, high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and corridor parking facilities to serve bus and other public mass transportation passengers. A substitute highway project may also be a carpool and vanpool project including but not limited to, providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking for carpools.

(9) *Substitute nonhighway public mass transit project* means any undertaking to develop or improve public mass transit facilities or equipment. A project in an urbanized area must be included in and related to the transportation improvement program (TIP) required under 23 CFR part 450, subpart B. The TIP in urbanized areas and all projects in nonurbanized areas must include either the construction of fixed rail facilities, or the purchase of passenger equipment, or both. Passenger equipment includes buses, fixed rail rolling stock, and other transportation equipment for passenger use.

(10) *Under construction or under contract for construction* means funds for physical construction have been obligated (for highway projects) or have been included in an approved grant (for transit projects) which would commit the final development of the ultimate project in both length and scope. When projects do not involve physical construction, *under construction or under contract for construction* means the obligation of funds (for highway projects) or grant approval (for transit projects) has occurred.

[45 FR 69396, Oct. 20, 1980, as amended at 51 FR 39748, Oct. 31, 1986]

Subparts B—C [Reserved]

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit or Highway Projects or Both

SOURCE: 45 FR 69397, Oct. 20, 1980, unless otherwise noted.

§ 476.300 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures for implementation of 23 U.S.C. 103(e)(4), which permits the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects or both.

§ 476.302 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to an Interstate segment at any stage of development if:

(1) The segment is within an urbanized area; or

(2) The segment passes through and connects urbanized areas within a State.

(b) The regulations in this subpart shall not apply to:

(1) A segment removed from the Interstate System prior to August 13, 1973;

(2) A segment added to the Interstate System after May 5, 1976, under the provisions of 23 U.S.C. 103(e)(2);

(3) Interstate segments designated under 23 U.S.C. 139;

(4) A toll bridge, tunnel, or approach thereto for which funds were advanced in accordance with 23 U.S.C. 124(b); or

(5) After September 30, 1979, an Interstate segment open to traffic before the date of the proposed withdrawal. If only a portion of an Interstate segment (between logical termini) is open to traffic the regulations of this subpart are applicable to the portion not open to traffic. The open to traffic portion will be removed from the Interstate System under 23 U.S.C. 103(f).

(6) Any segment added to the Interstate System by specific legislation

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unless a comparable statute permitting its withdrawal is enacted.

(7) A segment added to the Interstate System after August 13, 1973, under the provisions of 23 U.S.C. 103(e)(1).

(c) Withdrawal requests may not be approved under this subpart after September 30, 1983, unless the route segment was under a court injunction prohibiting its construction as of November 6, 1978. For segments under such injunction, withdrawal requests may not be approved under this subpart after September 30, 1986. However, as indicated in § 476.310(g), the September 30, 1986, substitute project construction time limitation remains applicable to these segments.

[45 FR 69397, Oct. 20, 1980, as amended at 46 FR 45603, Sept. 14, 1981]

§ 476.304 Withdrawal request.

(a) A request to withdraw an Interstate segment within a State under this subpart shall be submitted jointly by the Governor and local governments concerned. For those segments within urbanized areas, the concurrence of responsible local officials is also required. The withdrawal request shall be submitted to the Federal Highway Admininstrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Joint submittal may be accomplished by a single request prepared by the Governor and concurred in by the local governments concerned. This may also be accomplished by a request by the Governor with separate concurrence documentation by the local governments concerned. In either case, for those segments within urbanized areas, the concurrence of responsible local officials is also required. While unanimous local action is not required, the withdrawal request is expected to have substantial support.

(c) The request for withdrawal shall include the following:

(1) A statement that the request is filed pursuant to 23 U.S.C. 103(e)(4).

(2) Reasons why the segment is not essential to the completion of a unified and connected Interstate System.

(3) A detailed statement of mileage and cost of the segment to be withdrawn as included in the latest Interstate cost estimate approved by Congress.

(4) An assurance that a toll road will not be constructed in the traffic corridor which would be served by the segment.

§ 476.306 Withdrawal approval.

(a) The Federal Highway Administrator and the Urban Mass Transportation Administrator may approve the withdrawal of an Interstate segment under the provisions of this subpart after considering the impact of the withdrawal on national defense needs if:

(1) The requirements of § 476.304 are met; and

(2) The Federal Highway Administrator determines that the segment is not essential to completion of a unified and connected Interstate System.

(b) When the withdrawal of an Interstate segment is approved under paragraph (a) of this section, an amount equal to the Federal share of the cost to complete the withdrawn segment as shown in the latest Interstate System cost estimate approved by Congress is authorized for substitute projects. The amount authorized will be increased or decreased, as determined by the Federal Highway Administrator, based on changes in construction costs of the withdrawn route occurring between the base cost year of the latest cost estimate approved by Congress which included the costs of the withdrawn route and the date of approval of each substitute project. The changes in construction costs will be computed on the basis of the Composite Index shown in the quarterly publication "Price Trends for Federal-Aid Highway Construction." [1] For purposes of cost adjustments, the Composite Index for the calendar quarter within which the approval of the substitute project occurs will be used in computing the change in construction costs.

[1] Published by FHWA, Interstate Reports Branch, and available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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(c) Authorizations of funds made available by the withdrawal of an Interstate route under 23 U.S.C. 103(e)(4) shall remain available until expended within the limitations described in § 476.310 (f) and (g).

(d) Effective as of date of approval of the withdrawal of an Interstate segment, the unobligated apportionments for the Interstate System of the State receiving the approval will be reduced in the proportion that the Federal share of the cost of the withdrawn segment bears to the Federal share of the total cost of all Interstate routes in the State as reported in the latest Interstate System cost estimate approved by Congress.

(e) Mileage withdrawn under the provisions of this subpart may not be redesignated in any State under any provision of title 23 U.S.C.

(f) The payback of Federal-aid Interstate funds expended on a segment withdrawn under this subpart shall be governed by 23 CFR part 480, Use and Disposition of Property Acquired by States for Modified or Terminated Highway Projects.

(g) Segments withdrawn under the provisions of this subpart may not be redesignated under the provisions of 23 U.S.C. 139.

§ 476.308 Concept approval for substitute projects.

(a) A concept program which identifies the proposed substitute projects to be approved in concept and which, as a minimum, accounts for all unobligated funding made available by this subpart must be submitted as soon as practicable after the effective date of this subpart or after a withdrawal is formally approved.

(1) The substitute project concepts included in the program must be selected in a manner consistent with the procedures provided in § 476.310(b) and (c).

(2) The concept program submission must contain:

(i) A proposed split, if any, of Interstate withdrawal authorizations between transit and highway projects;

(ii) A concept description (e.g., type of work, termini, length, estimated cost, number and type of vehicles, size and type of facility, identification of major transportation investment, etc.) of the proposed transit and/or highway projects for which concept approval is requested; and

(iii) A summary of the anticipated level of overall funding needs by individual fiscal year, as estimated on a general transit and/or highway basis.

(3) The concept program shall be endorsed by the Governor and the responsible local officials.

(4) The concept program should be submitted by the Governor to the Federal Highway Administrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Approval of substitute project concepts must be given jointly by the Federal Highway Administrator and the Urban Mass Transportation Administrator by September 30, 1983. This time limitation does not apply to segments which were under court injunction prohibiting construction as of November 6, 1978.

(1) Adjustments and refinements to the previously approved project concepts may be permitted after September 30, 1983.

(2) Approval of the project concepts does not commit funding under this subpart nor does such approval constitute an obligation on the State or local governments to fully implement the project concepts. Approval of a project concept is processed as a categorical exclusion under 23 CFR part 771.

§ 476.310 Proposals for substitute public mass transit and highway projects.

(a) The proposed substitute projects must serve the urbanized area or connecting nonurbanized area corridor, or both, from which the Interstate segment was withdrawn.

(b) Substitute projects in or serving urbanized areas shall be based on an urban transportation planning process in accordance with 23 CFR part 450, subpart A (and policies and regulations pertaining thereto), and shall be selected by the responsible local officials of the urbanized area in accordance with 23 CFR part 450, subpart B. Substitute projects located outside but serving the urbanized area shall also have the concurrence of the responsi-

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ble local officials of the jurisdiction in which the project is located.

(c) Substitute projects in or serving the nonurbanized area corridor shall be selected by the responsible local officials of the nonurbanized area corridor. Substitute projects located outside but serving the nonurbanized area corridor shall also have the concurrence of the responsible local officials of the jurisdiction in which the project is located.

(d) Applications for substitute nonhighway public mass transit projects shall be developed either by the principal elected officials of general purpose local units of government in consultation with local transit officials or by local transit officials. Substitute highway projects shall be developed in accordance with the policies and procedures established for the Federal-aid highway system of which they will be a part. Substitute highway projects need not appear in the statewide Federal-aid program described in 23 CFR part 630, subpart A.

(e) Applications for substitute nonhighway public mass transit projects are submitted to the Urban Mass Transportation Administrator by the Governor. Requests for authorization to proceed with substitute highway projects are submitted to the Federal Highway Administrator by the Governor.

(f) After September 30, 1983, only applications for those substitute projects which have previously received concept approval under § 476.308 should be submitted.

(g) Substitute projects (for which sufficient funds are available) must be under construction or under contract for construction by September 30, 1986. This time limitation is applicable to all substitute projects, including those related to Interstate segments which were under court injunction prohibiting construction on November 6, 1978. Approval for substitute projects not meeting this requirement will be withdrawn or not issued, and no funds will be appropriated or authorized for these projects.

[45 FR 69397, Oct. 20, 1980, as amended at 51 FR 39748, Oct. 31, 1986]

§ 476.312 Combined proposal.

A proposal for one or more substitute projects may be combined with projects utilizing other Federal funds available including, but not limited to, financial assistance available under either the Urban Mass Transportation Act of 1964, as amended, or 23 U.S.C. 104. Only the funds available from a withdrawal under this subpart are constrained by the limiting amount described in § 476.306(b).

§ 476.314 Administrator's review and approval of substitute projects.

(a) The Urban Mass Transportation Administrator shall review substitute nonhighway public mass transit projects and the Federal Highway Administrator shall review substitute highway projects to determine that the projects meet the following requirements.

(1) The proposed projects serve the urbanized area or connecting nonurbanized area corridor or both from which the Interstate segment was withdrawn.

(2) The Federal share of the costs of the proposed projects which is to be provided under this subpart by virtue of the withdrawal of an Interstate segment does not exceed the Federal share of the cost of the withdrawn segment, as determined in § 476.306(b).

(b) Approval of substitute projects can be given only to the extent that authority to obligate the funds is available.

(c) For substitute nonhighway public mass transit projects, the approval of the plans, specifications, and estimates of a project, or any phase thereof, shall be deemed to occur on the date the Urban Mass Transportation Administrator approved the substitute project or phase thereof in accordance with the policies and procedures established for the UMTA section 3 capital grant program.

(d) Substitute highway projects will be approved by the Federal Highway Administrator in accordance with policies and procedures established for the Federal-aid highway program.

(e) Approval of a substitute project or phase thereof obligates the United States to pay its proportional share of

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the cost of the project or phase thereof out of the general funds in the Treasury.

(f) The Federal share for substitute projects approved after November 6, 1978, shall not exceed 85 percentum, notwithstanding the Federal share for nonhighway public mass transit projects established under the Urban Mass Transportation Act of 1964, as amended, and highway projects under title 23 U.S.C.

(g) The labor protective provisions of section 3(e)(4) of the UMT Act of 1964, as amended, (49 U.S.C. section 1602(e)(4)) are applicable to nonhighway public mass transit projects funded under the provisions of this subpart.

PART 480—USE AND DISPOSITION OF PROPERTY PREVIOUSLY ACQUIRED BY STATES FOR WITHDRAWN INTERSTATE SEGMENTS

Sec.

480.101 Purpose.
480.103 Applicability.
480.105 Definitions.
480.107 Reuse of property.
480.109 Requirement of credit to Federal funds.
480.111 Credit to original class of fund.
480.113 Relocation assistance.
480.115 Property management.
480.117 Intangible items.

AUTHORITY: Sec. 2, Pub. L. 96-106, 93 Stat. 796 (23 U.S.C. 103(e)(5), (6), (7)); sec. 107(f), Pub. L. 95-599, 92 Stat. 2689 (23 U.S.C. 103(e)(5), (8)); 23 U.S.C. 315; 49 CFR 1.48(b).

SOURCE: 51 FR 16018, Apr. 30, 1986, unless otherwise noted.

§ 480.101 Purpose.

This part addresses the extent to which a credit to Federal funds (payback) will be required for property acquired by States with the participation of Federal-aid highway funds when an Interstate segment for which the property was acquired is subsequently withdrawn under section 103(e)(2) or (e)(4) of title 23 U.S.C.

§ 480.103 Applicability.

(a) This part applies to property acquired with the participation of Federal-aid highway funds for any project on a Federal-aid Interstate segment which is subsequently withdrawn and where the Federal Highway Administration (FHWA) has not previously determined if a credit to Federal funds would be required for such property prior to the effective date of this part. This part applies to both individual submissions for specific pieces of property and comprehensive reuse plans for all property, depending on the extent of the State's submission.

(b) The provisions of § 480.107 concerning payback waiver and § 480.109(b)(3) concerning payback reduction apply only to property which has been or will be applied to a reuse under this part, as determined by the FHWA, within 10 years of the withdrawal of the Interstate segment in connection with which it was acquired. Lacking a submission by a State indicating the intent to sell property in accordance with the provisions of § 480.109(b)(2) or a submission by the State for waiver of paycheck within 10 years of withdrawal and actual reuse within 10 years of withdrawal, the FHWA will require that the pro rata share of the current fair market value of the property be credited to Federal funds in accordance with § 480.109(b)(1).

(c) Nothing in this part shall be considered to affect or conflict with the obligations of States with respect to the right-of-way (ROW) revolving fund pursuant to 23 U.S.C. 108(c).

§ 480.105 Definitions.

For purposes of this part:

Acquired in the case of real property means that title has been passed to the acquiring agency, or a legal obligation to complete the purchase of such real property has been established; or, in the case of construction, that work has been performed, or materials obtained, and payment is due under the contract provisions.

Applied to a reuse under this part means that construction leading to the reuse, or the reuse itself, has begun on the real property or that construction leading to the reuse, or the reuse itself, has begun on the site where the construction items and materials will be incorporated into another project.

Intangible items means items having no physical existence or recoverable

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value, e.g., preliminary engineering, construction engineering, appraisals, relocation payments, etc.

Property means land, and/or interests therein, including improvements, structures and appurtenances thereto, and any other acquired items having a physical existence but not yet physically incorporated into the project (such as construction items, materials, movable equipment and machinery).

§ 480.107 Reuse of property.

(a) This section applies to:

(1) Property acquired in connection with an Interstate highway segment withdrawn before November 6, 1978; or

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the segment had not been approved prior to the date of withdrawal.

(b) When property to which this section applies is no longer needed for the Interstate highway project for which it was acquired because of withdrawal of such Interstate segment, the State may, subject to the provisions of this section, reuse the property without being required to make payback, for:

(1) A transportation project permissible under title 23 U.S.C.;

(2) A public conservation or public recreation purpose; or

(3) Any other public purpose determined by the FHWA to be in the public interest.

(c) In order to request a waiver of payback for reuse of the property without being required to make a credit to Federal funds, the State shall submit to the FHWA the following information (States are encouraged to submit a comprehensive reuse plan, covering all property, rather than individual submissions for each piece of property):

(1) A description of how the State, or political subdivision thereof, or any of their agencies or instrumentalities, has reused or proposes to reuse the property and how such use satisfies paragraph (b) of this section. Only that property actually needed for a known reuse will be considered for waiver of payback. The intent of paragraph (b) of this section is to enable the States to avoid payback if the property is reused for publicly owned and operated facilities providing government services. To this end, the State shall indicate if any of the property involved was or will be transferred directly or indirectly to any private party in connection with the reuse. The State shall justify to the FHWA why reuse by a private party, without a requirement for credit to Federal funds, is considered a public purpose in the public interest. As a minimum, justification for such a transfer would have to show that property value estimates indicate the property has nominal value, and/or that proposals to competitively dispose of the property have generated little market interest.

(2) A certification that the current rights under State law of persons owning the real property immediately prior to such property being obtained by the State have been observed;

(3) An assurance that no major alteration in the reuse will be made without resubmitting the particulars of the individual case to the FHWA for another payback determination; and

(4) An assurance that the State will assume all obligations with respect to providing relocation assistance benefits to those persons described in § 480.113 after the FHWA's obligations are terminated in accordance with § 480.113.

(d) The State should also make the following information available in order to facilitate processing of a payback determination:

(1) The date the property was acquired;

(2) The withdrawal date of the Interstate segment for which the property was acquired;

(3) The approval date of any final environmental impact statement for the Interstate segment for which the property was acquired;

(4) The amount of Federal funds expended for the property to be reused; and

(5) Any additional related information requested by the FHWA.

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(e) Based on the submission, the FHWA will determine if the State is required to make a credit to Federal funds.

(f) Besides making the basic determination of whether or not the reuse satisfies paragraph (b) of this section, the FHWA will require a credit to Federal funds with respect to property if:

(1) The reuse is inconsistent with any Federal statute applicable to State/local undertakings not federally assisted;

(2) The certifications and assurances required by paragraph (c) of this section are not made;

(3) The property is to form, or its value is to form, part of the State or local matching share with respect to any Federal program; or

(4) The property is transferred to any private party, unless the FHWA determines that such a reuse, without a requirement for a credit to Federal funds, is for a public purpose in the public interest.

(g) If the FHWA determines that the assurances required by paragraph (c) of this section have not been observed, the FHWA will require that a credit to Federal funds be made as provided in § 480.109.

(h) While the FHWA does not require that the State be compensated for property reused by others under this section, should there be a payment or intergovernmental credit to the State for sales, leases, rents, etc., the State shall credit Federal funds at the same pro rata share as Federal funds participated in the original acquisition. The credit to Federal funds shall be made as soon as practicable after money or credit is received.

§ 480.109 Requirement of credit to Federal funds.

(a) This section applies to:

(1) Property for which the FHWA, under § 480.107, has determined that a credit to Federal funds must be made;

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the segment had been approved prior to the date of withdrawal;

(3) Property acquired on or after November 6, 1978, in connection with a segment withdrawn from the Interstate System; or

(4) Property described in § 480.107(a) for which the State elects not to request a waiver of payback.

(b) With respect to property to which this section applies, the State shall credit Federal funds, as soon as practicable, in the following manner:

(1) If the property is retained or transferred without cost, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the current fair market value of the property.

(2) If the property is sold, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the sale proceeds (after deducting actual and reasonable selling or fix-up expenses). Fix-up expenses are limited to the extent that they are reasonably expected to increase the value of the property by at least the amount of the fix-up expenses. The credit to Federal funds shall be based on sales procedures which, unless otherwise agreed to by the FHWA, provide for competition to the maximum extent practicable and are designed to result in the highest possible return.

(3) If the property described in paragraph (a)(2) or (a)(3) of this section has been or will be reused for another transportation project permissible under 23 U.S.C., in an amount equal to the difference between the funds the FHWA actually reimbursed the State for the property and the funds that would have been reimbursed in accordance with the current Federal share applicable to the transportation project to which the property will be applied. If the amount that would have been reimbursed is greater than the amount that was actually reimbursed, the difference will be considered zero. States shall provide to the FHWA the information required by § 480.107(c) and should provide the information requested by § 480.107(d) as soon as practicable after the State has determined how the property will be reused.

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§ 480.111 Credit to original class of fund.

In the event payback is required, an amount equivalent to the Federal funds paid back pursuant to this part will then be credited to the unobligated balance of the same class of funds to which the original acquisition of the property was attributable in the manner set forth in 23 U.S.C. 118(b).

§ 480.113 Relocation assistance.

With respect to owner-occupants, tenants, businesses, and farm operations whose property has been acquired in connection with federally assisted highway project, who are still in occupancy, and who could have qualified as displaced persons if they had moved prior to the date of withdrawal, the Interstate project obligations of the FHWA under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*) shall continue for that period of time after the withdrawal as is considered equitable by the Administrator but in no event shall this period extend beyond the date the FHWA determines that no credit to Federal funds is necessary for a reuse of the property or the date the State sells or otherwise disposes of the property.

§ 480.115 Property management.

Rules or standards of property management normally applicable to property obtained with the participation of Federal-aid highway funds shall continue to apply to the management of property acquired by States in connection with the project after withdrawal of the Interstate segment. These rules or standards shall cease to apply to the property two years after the effective date of this regulation or two years after a withdrawal approval (whichever occurs later) unless the Federal Highway Administrator determines that an extension beyond two years is in the public interest. During this time period the FHWA may, at its discretion, participate in the net costs of property management and in other costs related to the acquisition of the property or withdrawal of the highway project that are incurred. Costs associated with the design and development of the property for other uses (such as developing a reuse plan or site development costs) are not considered property management costs. In any case, Federal participation will not extend beyond the date of a determination by the FHWA that no credit to Federal funds is necessary for a reuse of the property or the date the State sells or otherwise disposes of the property.

§ 480.117 Intangible items.

States are not required to make a credit to Federal funds for intangible items for which the State had expended Federal-aid highway funds in connection with an Interstate segment which is later withdrawn.

PART 490—SPECIAL PROGRAMS

Subpart A—Economic Growth Center Development Highways

Sec.

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APPENDIX A TO SUBPART A—CRITERIA FOR SELECTION AND APPROVAL OF ECONOMIC GROWTH CENTER HIGHWAYS AND DEVELOPMENT HIGHWAY PROJECTS

AUTHORITY: 23 U.S.C. 143, 315; 49 CFR 1.48(b) (26) and (35).

SOURCE: 39 FR 35142, Sept. 30, 1974, unless otherwise noted.

Subpart A—Economic Growth Center Development Highways

§ 490.101 Purpose.

The purpose of this subpart is to prescribe policies and procedures for administering the Economic Growth Center Development Highway Program by furnishing specific procedures, criteria, and definitions needed to assist State Governors, State highway officials, and Federal Highway Administration headquarters and field staffs in implementing the program.

§ 490.103 Definitions.

(a) The term *Commuting range* means that distance from a growth center from which residents of rural

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counties can commute daily, with reasonable convenience, to work or other opportunities in the growth center.

(b) The term *Development Highway Projects* means a project on an economic growth center development highway approved by the Federal Highway Administrator for construction, reconstruction, or other improvement with funds authorized under provisions of 23 U.S.C. 143.

(c) The term *Division Administrator* means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(d) The term *Economically capable* means the economic capability of an area to be designated as an economic growth center. A determination that a proposed growth center is economically capable will rest primarily upon past economic performance of the area and upon its future potential.

(e) The term *Economic development* means economic development of an area as evidenced by increments in total income, employment opportunities, populations, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, and/or gains in other measures of economic activity, such as land values.

(f) The term *Economic Development District* means a group of adjacent counties or areas, including a growth center, grouped together under a program authorized by Congress and designated by the Eonomic Development Administration.

(g) The term *Economic Development Plan* means a formal attempt to bring order, priority, and foresight into government and private expenditures.

(h) The term *Economic Growth Center* means a center of less than 100,000 population approved by the Secretary on the basis of recommendations of the Governor of the State.

(i) The term *Economic Growth Center Development Highway* means a highway on any Federal-aid system except the Interstate System which meets the requirements established by 23 U.S.C. 143 and is approved by the Secretary of Transportation for construction, reconstruction, or improvement under the provisions of that section.

(j) The term *Geographically capable* means the ability of an area surrounding a proposed growth center to provide area residents, and residents of the growth center, the opportunity, with reasonable convenience, to commute to or from the center to employment or to other public and private services available in the area.

(k) The term *Public and private services* means such services providing health care, transport, education, legal, employment, recreational, cultural, and other similar services available to the public.

(l) The term *Redevelopment area* means a county, Indian reservation, or other definable area designated by the Economic Development Administration under a program authorized by Congress to attempt to solve problems caused by high unemployment and low median family income levels.

§ 490.105 Applicability.

(a) The Federal-Aid Highway Act of 1973 continued the Economic Growth Center Development Highway Program, but modified it in three important respects:

(1) 23 U.S.C. 143(a) was amended to eliminate the "demonstration" feature, thereby indicating a congressional intent to make the growth center provision an element of the overall Federal-aid highway program:

(2) The 20 percent add-on or "sweetner" financing provision of the Federal-Aid Highway Act of 1970 was eliminated and authorizations for the 1974, 1975, and 1976 fiscal years were made (in section 104(a)(10)) to provide the same Federal share payable as for any other project on the Federal-aid system on which the development highway is located; and

(3) The program was broadened to include projects on any Federal-aid system except the Interstate System.

(b) This directive applies to all development highway projects under provisions of title 23 U.S.C. 143.

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§ 490.107 Implementation.

(a) Highway projects to serve economic growth centers shall be approved by the Division Administrator according to ordinary Federal-aid procedures, provided the Division Administrator is satisfied that the project has a reasonable likelihood of improving the economic and social performance of the growth center.

(b) Economic growth centers approved under 23 U.S.C. 143 prior to the issuance of this directive shall be continued as active centers in the new program until they are replaced by new centers in accordance with § 490.107(c). New highway projects selected to continue improvement of previously approved centers are eligible for immediate approval by the Division Administrator provided he is satisfied that the project has a reasonable likelihood of improving the economic and social performance of the growth center.

(c) New economic growth centers may be recommended by the Governors of the several States in addition to existing centers. However, no State shall have more than three currently active growth centers. New centers may be recommended to replace centers for which funds have been fully obligated for all approved projects, or for which no projects have been initiated. Governors shall submit their recommendations to the Regional Federal Highway Administrator through their State highway agencies.

(d) A Governor's recommendation for a new economic growth center shall be accompanied by economic and demographic data supporting his suggestions and explaining why and how additional highway investment might assist in further developing the potential of the area. Criteria listed in appendix A of this subpart must be considered by the Governors in recommending growth centers.

(e) Regular Federal-aid procedures applicable to the system on which a project is located shall be used, except as modified in this subpart.

[39 FR 35142, Sept. 30, 1974, as amended at 42 FR 7137, Feb. 7, 1977; 46 FR 42266, Sept. 14, 1981]

§ 490.109 Financing.

(a) Section 104(a)(10) of the Federal-Aid Highway Act of 1973 authorizes appropriations out of the Highway Trust Fund to finance the Economic Growth Center Development Highway Program. In addition, unobligated balances remaining from the demonstration program are available for use in the new program.

(b) The requirement in the Federal-Aid Highway Act of 1970 that "the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be increased by not to exceed an additional 20 per centum of the cost of such project, except that in no case shall the Federal share exceed 95 per centum of the cost of such project" shall continue to apply to all projects under 23 U.S.C. 143 for which plans, specifications and estimates were approved prior to the enactment of the Federal-Aid Highway Act of 1973 (August 13, 1973) until such projects are completed. The Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under 23 U.S.C. 143 for which plans, specifications and estimates were or are approved subsequent to enactment of the Federal-Aid Highway Act of 1973 shall be the same as the Federal share payable for the Federal-aid system on which such development highway is located.

(c) Federal-aid funding from two or more Federal-aid highway programs may occur but the Federal share for each must be in accordance with 23 U.S.C. 120.

[39 FR 35142, Sept. 30, 1974, as amended at 42 FR 7138, Feb. 7, 1977]

§ 490.111 Criteria.

In accordance with 23 U.S.C. 143(f), criteria have been developed to aid Governors in recommending economic growth centers to the Federal Highway Administrator. All criteria are detailed in appendix A of this subpart and will be utilized by Regional Administrators in their determination as to whether growth centers recommended by the Governors meet the

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criteria of the act. These criteria also will be used to guide the selection of individual projects to serve the growth centers.

APPENDIX A TO SUBPART A—CRITERIA FOR SELECTION AND APPROVAL OF ECONOMIC GROWTH CENTER HIGHWAYS AND DEVELOPMENT HIGHWAY PROJECTS

Requirements for Governors' Submittal to the Regional Federal Highway Administrators. In order to meet the requirements of 23 U.S.C. 143, the Secretary has established through the Federal Highway Administration and in consultation with the Secretary of Commerce and the regional commissions,[1] the following criteria that must be considered by the Governors in recommending growth centers and in establishing a priority listing.

A. *Legislative Criteria for Economic Growth Center Selection.* 1. Growth centers shall be geographically and economically capable of contributing significantly to the development of the surrounding areas.

2. Growth centers shall have a population not in excess of 100,000 according to the 1970 Federal Census of Population; and

3. The selection of growth centers within the Appalachian region and in the economic development regions, shall take into account the purposes of the Appalachian Regional Development Act of 1965 and the Public Works and Economic Development Act of 1965.

B. *Administrative Criteria for Economic Growth Center Selection.* Listed below are additional criteria or guidelines to which Governors, in consultation with the State highway departments, and regional development commissions and development or planning agencies, when appropriate, shall direct their attention when recommending economic growth centers for selection. Because of the many objectives of 23 U.S.C. 143, recommended centers need not be related necessarily to any single administrative criterion. Centers could include communities with either demonstrated or potential viability.

1. To obtain maximum development from economic growth center funds, the States are encouraged to concentrate on additional projects serving growth centers approved under the demonstration phase of this program.

2. In recommending new or substitute economic growth centers, Governors shall give top priority to areas included in existing regional development programs. Consideration shall also be given to local development districts established by State and local action under the Appalachian Regional Commission.

a. By giving special consideration in the selection process to growth centers designated under programs which have already received or which are slated to receive additional amounts of public and private capital investments, a leverage effect on development potential will be exerted.

b. Proper channels of communication should be observed by the State highway agencies with such other regional, State, and local commissions and agencies as are involved under the terms of title 23 U.S.C. 143. 23 U.S.C. 143(f) requires the Secretary of Transportation, prior to project approval, to consult with the Federal Cochairman of the Appalachian Regional Commission when a project is proposed to be conducted in the Appalachian region, as defined in section 403 of the Appalachian Regional Development Act of 1965, and with the Secretary of Commerce when a project is proposed in an economic development region as defined in Title V of the Public Works and Economic Development Act of 1965. In fulfillment of this requirement, the States, when submitting growth center projects for approval, shall include in their submissions a statement of the attitudes and reactions of the above agencies.

3. Communities or centers also may be recommended for selection even though they are not included in ongoing regional development programs if they offer possibilities for growth through natural resource development or other industrial or commercial activities. Prospective growth centers possessing the following attributes will merit special consideration because of demonstrated viability:

a. Centers which provided during the past decade, or in a more recent period, significant employment and residence opportunities for residents from nearby or surrounding rural counties.

b. Centers or communities which have been growing in a relative sense to the surrounding area or region; i.e., centers which during the past decade, or in a more recent period, evidenced high average wage levels or faster population and/or employment growth relative to surrounding rural counties and/or the region.

c. Communities which evidence *potential-viability* based on private and public plans and data submitted, also may be recommended. It is conceivable that some communities may have shown little or even no growth over the past decade, but have defi-

[1] Regional Commissions refer to the Appalachian Regional Commission and the commissions established under Title V of the Public Works and Economic Development Act of 1965.

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nitely served an important function as a service and employment center for the surrounding rural areas and have inherent but untapped growth potential. Had this role not been played by the recommended center, the surrounding counties, though possibly stagnant during recent decades, might have suffered even further decline in economic performance. If such a role will likely continue into the future, or if prospects are favorable for future growth because of industry location plans and governmental investment, such communities may be recommended as economic growth centers. Data on such further prospects should be forwarded by the respective Governors together with data on boundaries of operationally defined service or trade areas, measured, perhaps, by newspaper routes, commuting patterns, or labor market boundaries.

d. The ability to support future growth may be integrally related to the diversification of the economic base of a community. Such diversification would be indicated by a wide variety of manufacturing or service industry activities (as measured, for instance, by the proportion of the total work force employed in each of the activities, or by the proportion of total income earned in each of the activities) providing goods and services to both local and regional or national markets.

e. A community's viability may also be indicated by the availability of existing or planned alternative transportation systems including publicly owned airport and waterport facilities.

f. Other indicators of the capability of proposed growth centers include, but are not limited to:

(1) Availability of adjacent land suitable for industrial commercial development,

(2) Availability of adequate water resources for human, industrial, and commercial consumption, and

(3) Utilities, schools, and other public services adequate to meet the community's current and future needs.

4. Consideration should be given to new towns or communities in rural settings. Such communities may also be eligible for financial and other assistance for highway projects under section 710 of the Housing and Urban Development Act of 1970. Additionally, newly developed communities may be used for the testing and development of technological, physical, and institutional innovation applicable to other communities and areas. New towns which are satellite or bedroom communities of metropolitan areas are not the types of communities to which this legislation is addressed.

C. *Other Requirements.* 1. *Proposed* growth centers including an urban area of 50,000 population or more shall meet the requirements for urban transportation planning specified in title 23 U.S.C. 134.

2. When recommending centers for approval Governors should submit summaries of any formal private or public plans related to the economic and social development of a proposed growth center and surrounding areas, if these have been developed. The availability of such a plan is not mandatory, although existence of a formal economic development planning process indicates the extent of community and regional interest in development. When such plans are unavailable, Governors shall submit relevant social and economic data to support their rationale for selection. Such data should illustrate the present condition of the center and target areas, major impediments to development; present intermodal transportation facilities and their linkages to the growth center, markets, the rural hinterland, and the overall transportation, network; and the possible impact upon the area and region resulting from more adequate transportation connections. Estimates of the expected impact of the highway program in conjunction with the public and private programs are important in determining priorities for growth center selection and approval.

[40 FR 2581, Jan. 14, 1975]

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SUBCHAPTER F—RESEARCH AND DEVELOPMENT

PART 511—RESEARCH AND DEVELOPMENT (R&D) STUDIES AND PROGRAMS; GENERAL

Sec.

511.1 Purpose.
511.2 [Reserved]
511.3 Definitions.
511.4 Policy.
511.5 R&D work program and changes.
511.6 Study proposals and changes.
511.7 Equipment and patents.
511.8 R&D reports.
511.9 Criteria for cooperatively funded studies.
511.10 R&D management option.

AUTHORITY: 23 U.S.C. 307(c), 315; 49 CFR 1.48(b).

SOURCE: 46 FR 59534, Dec. 7, 1981, unless otherwise noted.

§ 511.1 Purpose.

The purpose of this regulation is to prescribe policies and procedures for R&D federally funded studies and programs.

§ 511.2 [Reserved]

§ 511.3 Definitions.

(a) *Budget item*—A short descriptive title in the budget tabulation with its associated budget estimate.

(b) *Final report*—A report documenting a completed study.

(c) *Highway Research Information Service (HRIS)*—A computerized storage and retrieval system for two types of information:

(1) Resumes of ongoing R&D studies, and

(2) Abstracts of R&D reports and articles.

(d) *Implementation*—The translation and followup of research results to provide the basis for adopting the innovations into practice.

(e) *Major change*—A change, including termination, in a study's objective, scope, work plan, or principal investigator, which significantly alters the course or expected results of the study. Any change which increases the initial estimated cost by more than $10,000 and 15% shall be considered a major change.

(f) *Minor change*—Any other change in the study.

(g) *National Cooperative Highway Research Program (NCHRP)*—A pooled fund program directed toward problems of national significance sponsored by the State highway agencies (SHA's) and FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

(h) *Nonexpendable equipment*—Equipment having a useful life of more than 1 year and an acquisition cost of more than $300 per unit.

(i) *Pooled funding*—The cooperative funding of a study or program by two or more SHA's.

(j) *Proposal*—An outline of specific research or development to be conducted which includes such items as description of the objectives, work plan, cost estimate, and time schedule.

(k) *R&D Work Program*—An annual or biennial listing of proposed work and estimated cost.

(l) *Type B Study*—A small-scale study which does not exceed $75,000 or require more than 2 years to complete (this time limit may be extended for reasonable delays not to exceed 1 year or for experimental construction studies) and is one of the following types: (1) Short-term study related to local or regional problems; (2) exploratory, survey, or feasibility study; (3) experimental construction study (see Federal-Aid Highway Program Manual, volume 6, chapter 4, section 2, subsection 4 (FHPM 6-4-2-4). Construction Projects Incorporating Experimental and/or Evaluation Features);[1] or (4) implementation effort.

(m) *Type A Study*—A study which addresses regional or national problems or exceeds the limitations of a Type B study defined above.

[46 FR 59534, Dec. 7, 1981; 47 FR 6266, Feb. 11, 1982]

[1] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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§ 511.4 Policy.

(a) *R&D Programs.* Each SHA is encouraged to maintain a viable research and development program, adequately funded, to address their most urgent short- and long-range problems. To promote effective utilization of available resources, SHA's are encouraged to cooperate with FHWA and other SHA's to achieve R&D objectives established at the national level. An SHA R&D program is primarily a problem-solving service to the practicing engineers and other users. It can best be justified as a continuing activity when it is demonstrated that R&D results and end-products are used and pay dividends to the highway program as a whole.

(b) *Technology transfer.* In order to benefit from the results of research and development, each SHA is encouraged to develop an active technology transfer program to promote the use of those results.

(c) *R&D reports.* All studies shall be completely documented in a timely manner. When the work is not normally expected to result in a final report, this provision will not apply.

(d) *Cooperatively funded studies & programs.* When widespread national or regional interest is shown in the solution of a significant problem, FHWA encourages arrangements by which an R&D study may be cooperatively sponsored by two or more SHA's. The study may be administered by a lead SHA under its own procedures, by NCHRP, or by the FHWA Washington Headquarters under the Federal Acquisition Regulations (48 CFR).

(e) *Civil Rights.* The implementation of these program activities shall be in accordance with the policy of the Federal Highway Administration to ensure compliance with Title VI of the Civil Rights Act of 1964, 49 CFR part 21, and Related Statutes and Regulations, as stated in 23 CFR part 200.

[46 FR 59534, Dec. 7, 1981, as amended at 51 FR 22800, June 23, 1986]

§ 511.5 R&D work program and changes.

(a) An SHA desiring Federal aid for R&D work must prepare an R&D work program and submit it to FHWA for approval. It shall cover each approved Type A and Type B study until either the study's draft final report has been accepted by FHWA as fulfilling the technical requirements, or the study has been terminated. It shall include the following information in tabular form for each budget item.

(1) State study number.

(2) Study type (A or B).

(3) Study title.

(4) Budget estimate for program year.

(5) Estimated cost for previous year for continuing studies.

(b) Individual budget items for "Administration," "Research Correlation Service," "Implementation," and "Contingencies" may be included as needed in each SHA R&D work program, in addition to the budget items for Type A and Type B studies, and a listing of proposed studies. Cost increases of more than 15% in the non-study items shall be submitted to FHWA for approval.

§ 511.6 Study proposals and changes.

(a) An SHA desiring Federal aid initiates a request for a Type A or Type B study by submitting the study proposal to the Federal Highway Administration (FHWA) for approval except as provided in § 511.10, *R&D management option.* A research study proposal shall establish the necessity for a research undertaking, clearly define the objective, provide a detailed work plan for achieving the objective, and indicate how the research findings are expected to be used. An HRIS or other literature search shall be made for Type A studies to minimize duplication of work. Such a search is encouraged for Type B studies.

(b) *Major changes.* Major changes in the objective, scope, work plan, principal investigator, or cost shall be fully documented and for Type A studies shall be submitted to FHWA for prior approval. An SHA may make major changes in Type B studies without prior FHWA approval.

(c) *Minor changes.* Minor cost changes may be made by the SHA without FHWA approval except for the purchase of nonexpendable equipment costing over $1,000. FHWA shall

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be promptly informed of all actions taken by the SHA.

§ 511.7 Equipment and patents.

(a) Nonexpendable equipment for an R&D study shall be purchased and managed in such a manner that only those equipment costs reasonably attributable to the study are charged to that study. Nonexpendable equipment purchased with Federal-aid funds shall be properly disposed of at the completion of the study and the residual value credited to the study. The SHA shall obtain prior FHWA approval on all equipment purchased, rented, or disposed or which exceeds $1,000. This approval may be requested as a part of the proposal submission, or as a separate submission.

(b) Each SHA shall maintain an inventory record for each piece of nonexpendable equipment purchased or built under the Federal-aid R&D program including equipment acquired by a contractor. Property records shall include:

(1) A description of the property including the manufacturer's serial number, model number, or other identification number.

(2) Source of the property including the study number or title.

(3) Acquisition date and unit acquisition cost.

(4) Location, use and condition of the property and the date the information was reported.

(5) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value.

(c) When nonexpendable property is acquired with Federal-aid funds, the title shall rest with the SHA.

(d) If an R&D study is expected to produce patents, patent rights processes or inventions, the SHA shall insert one of the clauses for domestic contracts set forth in 48 CFR chapter 1, part 27, Patents, or a substitute approved by FHWA, to assure the preservation of the public's rights in inventories resulting from these studies. The SHA shall promptly report to FHWA the fact of any invention or discovery which occurs in the course of the study and shall consult with FHWA regarding the disposition of the matter.

[46 FR 59534, Dec. 7, 1981, as amended at 51 FR 22801, June 23, 1986]

§ 511.8 R&D reports.

(a) *Progress reports.* For all studies in an approved work program, progress reports shall be submitted to FHWA as specified in FHWA's approval of the study. A minimum of two progress reports shall be submitted each year. These reports shall contain sufficient information to evaluate the progress and possible future course of study.

(b) *Interim reports.* These reports shall be submitted to FHWA for review and acceptance prior to publication. They shall be submitted when major phases of a study are completed as stipulated in the approved work plan, or when significant scientific breakthroughs are realized.

(c) *Final reports.* A final report shall completely document all data gathered, analyses performed, and the results achieved. For a study where a number of interim reports have been published, a summary final report is satisfactory, provided adequate detailed documentation of the work completed has been published previously. The SHA's shall determine if a study produced implementable results. If so, the study report shall recommend procedures for implementation, and indicate expected benefits. The final report shall be sent to FHWA for review and acceptance prior to publication.

(d) The author shall be free to copyright material developed under the contract with the provision that the SHA and FHWA reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

(e) Reports of nonprofitmaking organizations may be published if FHWA fails to complete its review within 4 months from submission. Reports of nonprofitmaking organizations may be published even though the FHWA does not concur with the findings and conclusions in the report,

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provided FHWA has the right to include technical comments in the report in a clearly identified section such as "sponsors comments."

(f) Adherence to the DOT document "Standards for the Preparation and Publication of DOT Scientific and Technical Reports" is encouraged in the preparation of all R&D interim and final reports.

(g) An SHA shall include in each report a credit reference to FHWA such as, "prepared in cooperation with the U.S. Department of Transportation, Federal Highway Administration."

(h) An SHA shall include in each report a disclaimer statement equivalent to the following:

The contents of this report reflect the views of the author(s) who is (are) responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the (SHA or the) Federal Highway Administration at the time of publication. This report does not constitute a standard specification, or regulation.

§ 511.9 Criteria for cooperatively funded studies.

(a) The following criteria are used by FHWA for determining when Federal-aid funds used for R&D studies and programs without State matching would best serve the interest of the Federal-aid highway program:

(1) The proposed study or program addresses a national or regional problem of high priority, and the results are expected to be immediately implementable.

(2) The study proposal satisfies the requirements in § 511.6(a) of this regulation.

(b) The National Cooperative Highway Research Program (NCHRP) satisfies the criteria set forth in § 511.9(a), and Federal-aid funds without State matching may be used in this program.

§ 511.10 R&D management option.

(a) Any SHA operating under the R&D management option may initiate new Type B studies without prior FHWA approval except those which require FHWA approval of the proposed work in accordance with 23 CFR part 172, Administration of Negotiated Contracts. The FHWA shall be fully informed of all such actions by transmittal of the initiating documents to FHWA.

(b) If an SHA desires to manage its Federal-aid R&D program under this option, the SHA shall submit a request to FHWA for approval. FHWA will review the SHA's request and will determine if the SHA is capable of accomplishing the legislative objectives of the Federal-aid R&D Program (23 U.S.C. 307(c)) without FHWA review and approval of Type B studies. The FHWA review will be based on the following criteria:

(1) The SHA has established internal reporting and review procedures to accomplish the legislative objectives of 23 U.S.C. 307(c).

(2) The SHA has documented its current internal operating procedures which include the requirements of 23 CFR subchapter F.

(3) The SHA has designated R&D manager to direct and control the Federal-aid program.

(c) If the SHA's request satisfies the criteria, its request to operate under the R&D management option shall be approved by FHWA. If the SHA's R&D management is in substantial (but not complete) agreement with the criteria, the SHA's request may be approved on a provisional basis.

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SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 620—ENGINEERING

Subpart A—Highway Improvements in the Vicinity of Airports

Sec.
620.101 Purpose.
620.102 Applicability.
620.103 Policy.
620.104 Standards.

Subpart B—Relinquishment of Highway Facilities

620.201 Purpose.
620.202 Applicability.
620.203 Procedures.

AUTHORITY: 23 U.S.C. 315 and 318; 49 CFR 1.48, 23 CFR 1.32.

Subpart A—Highway Improvements in the Vicinity of Airports

SOURCE: 39 FR 35145, Sept. 30, 1974, unless otherwise noted.

§ 620.101 Purpose.

The purpose of this section is to implement title 23 U.S.C., section 318 which requires coordination of airport and highway developments to insure (a) that airway-highway clearances are adequate for the safe movement of air and highway traffic, and (b) that the expenditure of public funds for airport and highway improvements is in the public interest.

§ 620.102 Applicability.

The requirements of this section apply to all projects on which Federal-aid highway funds are to be expended and to both civil and military airports.

§ 620.103 Policy.

(a) Federal-aid highway funds shall not participate in the costs of reconstruction or relocation of any highway to which this section applies unless the Federal Highway Administration (FHWA) and State officials, in cooperation with the Federal Aviation Administration (FAA) or appropriate military authority, or in the case of privately owned airports, the owner of that airport, determine that the location or extension of the airport in question and the consequent relocation or reconstruction of the highway is in the public interest.

(b) In addition to complying with 23 U.S.C. 318 and insuring the prudent use of public funds, it is the policy of FHWA to provide a high degree of safety in the location, design, construction and operation of highways and airports.

(c) Federal-aid funds shall not participate in projects where substandard clearances are created or will continue to exist.

§ 620.104 Standards.

A finding of public interest by FHWA will be based on compliance with airway-highway clearances which conform to FAA standards for aeronautical safety.

Subpart B—Relinquishment of Highway Facilities

SOURCE: 39 FR 33311, Sept. 17, 1974, unless otherwise noted.

§ 620.201 Purpose.

To prescribe Federal Highway Administration (FHWA) procedures relating to relinquishment of highway facilities.

§ 620.202 Applicability.

The provisions of this section apply to highway facilities where Federal-aid funds have participated in either right-of-way or physical construction costs of a project.

§ 620.203 Procedures.

(a) After final acceptance of a project on the Federal-aid primary, urban, or secondary system or after the date that the plans, specifications and estimates (PS&E) for the physical construction on the right-of-way for a Federal-aid Interstate project have been approved by the FHWA, relinquishment of the right-of-way or any change made in control of access shall be in accordance with the provisions of this section. For the purposes of this section, final acceptance for a project involving physical construction

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is the date of the acceptance of the physical construction by the FHWA and for right-of-way projects, the date the division engineer determines to be the date of the completion of the acquisition of the right-of-way shown on the final plans.

(b) For the purposes of this section, *relinquishment* is defined as the conveyance of a portion of a highway right-of-way or facility by a State highway agency (SHA) to another Government agency for highway use.

(c) The following facilities may be relinquished in accordance with paragraph 203(f):

(1) Sections of a State highway which have been superseded by construction on new location and removed from the Federal-aid system and the replaced section thereof is approved by the FHWA as the new location of the Federal-aid route. Federal-aid funds may not participate in rehabilitation work performed for the purpose of placing the superseded section of the highway in a condition acceptable to the local authority. The relinquishment of any Interstate mileage shall be submitted to the Federal Highway Administrator as a special case for prior approval.

(2) Sections of reconstructed local facilities that are located outside the control of access lines, such as turnarounds of severed local roads or streets adjacent to the Federal-aid project's right-of-way, and local roads and streets crossing over or under said project that have been adjusted in grade and/or alignment, including new right-of-way required for adjustments. Eligibility for Federal-aid participation in the costs of the foregoing adjustments is as determined at the time of PS&E approval under policies of the FHWA.

(3) Frontage roads or portions thereof that are constructed generally parallel to and outside the control of access lines of a Federal-aid project for the purpose of permitting access to private properties rather than to serve as extensions of ramps to connect said Federal-aid project with the nearest crossroad or street.

(d) The following facilities may be relinquished only with the approval of the Federal Highway Administrator in accordance with paragraph 203(g).

(1) Frontage roads or portions thereof located outside the access control lines of a Federal-aid project that are constructed to service (in lieu of or in addition to the purposes outlined under paragraph (c)(3) of this section) as connections between ramps to or from the Federal-aid project and existing public roads or streets.

(2) Ramps constructed to serve as connections for interchange of traffic between the Federal-aid project and local roads or streets.

(e) Where a frontage road is not on an approved Federal-aid system title to the right-of-way may be acquired initially in the name of the political subdivision which is to assume control thus eliminating the necessity of a formal transfer later. Such procedure would be subject to prior FHWA approval and would be limited to those facilities which meet the criteria set forth in paragraphs (c) (2) and (3) of this section.

(f) Upon presentation by a State that it intends to relinquish facilities such as described in paragraph (c) (1), (2) or (3) of this section to local authorities, the division engineer of the FHWA shall have appropriate field and office examination made thereof to assure that such relinquishments are in accordance with the provisions of the cited paragraphs. Relinquishments of the types described in paragraph (c) (1), (2) or (3) of this section may be made on an individual basis or on a project or route basis subject to the following conditions and understandings:

(1) Immediately following action by the State in approving a relinquishment, it shall furnish to the Division Administrator for record purposes a copy of a suitable map or maps identified by the Federal-aid project number, with the facilities to be relinquished and the date of such relinquishment action clearly delineated thereon.

(2) If it is found at any time after relinquishment that a relinquished facility is in fact required for the safe and proper operation of the Federal-aid highway, the State shall take immediate action to restore such facility to its

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jurisdiction without cost to Federal-aid highway funds.

(3) If it is found at any time that a relinquished frontage road or portion thereof or any part of the right-of-way therefor has been abandoned by local governmental authority and a showing cannot be made that such abandoned facility is no longer required as a public road, it is to be understood that the Federal Highway Administrator may cause to be withheld from Federal-aid highway funds due to the State an amount equal to the Federal-aid participation in the abandoned facility.

(4) In no case shall any relinquishment include any portion of the right-of-way within the access control lines as shown on the plans for a Federal-aid project approved by the FHWA, without the prior approval of the Federal Highway Administrator.

(5) There cannot be additional Federal-aid participation in future construction or reconstruction on any relinquished "off the Federal-aid system" facility unless the underlying reason for such future work is caused by future improvement of the associated Federal-aid highway.

(g) In the event that a State desires to apply for approval by the Federal Highway Administrator for the relinquishment of a facility such as described in paragraph (d) (1) and (2) of this section, the facts pertinent to such proposal are to be presented to the division engineer of the FHWA. The division engineer shall have appropriate review made of such presentation and forward the material presented by the State together with his findings thereon through the Regional Federal Highway Administrator for consideration by the Federal Highway Administrator and determination of action to be taken.

(h) No change may be made in control of access, without the joint determination and approval of the SHA and FHWA. This would not prevent the relinquishment of title, without prior approval of the FHWA, of a segment of the right-of-way provided there is an abandonment of a section of highway inclusive of such segment.

(i) Relinquishments must be justified by the State's finding concurred in by the FHWA, that:

(1) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;

(2) That the right-of-way being retained is adequate under present day standards for the facility involved;

(3) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;

(4) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of 23 U.S.C. 319 and Pub. L. 89-285, Title III, sections 302-305 (Highway Beautification Act of 1965).

(j) If a relinquishment is to a Federal, State, or local governmental agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge to the said agency and Federal funds participated in the cost of the right-of-way, there shall be a credit to Federal funds on the same basis Federal funds participated in the cost of the right-of-way.

PART 625—DESIGN STANDARDS FOR HIGHWAYS

Sec.

625.1 Purpose.
625.2 Policy.
625.3 Application.
625.4 Standards, policies, and standard specifications.
625.5 Guides and references.
APPENDIX A—DOCUMENTS CITED IN PART 625

AUTHORITY: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

EDITORIAL NOTE: For documents cited by bracketed numbers, see appendix A.

§ 625.1 Purpose.

To designate those standards, specifications, policies, guides and references that are acceptable to the Federal Highway Administration (FHWA) for application in the geometric and structural design of highways.

[51 FR 16832, May 7, 1986]

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§ 625.2 Policy.

(a) Plans and specifications for proposed Federal-aid highway projects shall provide for a facility that will—

(1) Adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; and

(2) Be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The development and overall management of highway facilities must be considered as a continuing program. This process of highway management commences with planning and extends through design, construction, maintenance, and operation. To assure a continuing acceptable level of safe traffic service, it is essential to provide for adequate maintenance and periodic resurfacing, restoration, and rehabilitation (RRR) throughout the life of the highway. The RRR work is defined as work undertaken to extend the service life of an existing highway and enhance highway safety. This includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders, bridges, the roadside, and appurtenances to a condition of structural or functional adequacy. The RRR work may include upgrading of geometric features, such as minor roadway widening, flattening curves, or improving sight distances. The RRR work is an essential part of any highway program, and each State and local agency should provide for these types of improvements in each annual highway program.

(c) An important goal of the FHWA is to provide the highest practical and feasible level of safety for people and property associated with the Nation's highway transportation systems and to reduce highway hazards and the resulting number and severity of accidents on all the Nation's highways. Accordingly, the only constraint on the application of Federal-aid funds to RRR work is that they must be used to provide a facility that adequately meets existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance, and acceptable levels of community and environmental impact. The RRR projects shall be designed and constructed in a manner that will enhance highway safety and accomplish the foregoing objectives according to the particular needs of each State and locality.

[51 FR 16832, May 7, 1986, as amended at 54 FR 281, Jan. 5, 1989]

§ 625.3 Application.

(a) The standards, policies, and standard specifications contain specific criteria and controls for the design of highways. Deviations from specific minimum values therein are to be handled in accordance with procedures in paragraph (f) of this section. If there is a conflict between criteria in the documents enumerated in § 625.4 of this part, the latest listed standard, policy, or standard specification will govern.

(b) The guides and references (handbooks, reports, etc.) include information and general controls that are valuable in attaining good design and in promoting uniformity. They are intended to provide general program direction. Project-by-project deviations from the criteria in guides and references do not require handling as exceptions under paragraph (f) of this section.

(c) Application of FHWA regulations, although cited in § 625.4 of this part as standards, policies, and standard specifications, shall be as set forth therein.

(d) This regulation does not establish Federal standards for work that is not federally funded; however, the safety related criteria of the referenced documents are established as goals for developing State and local safety programs for all public highways as required by Highway Safety Program Standard 12, 23 CFR 1204.4.

(e) The Division Administrator shall determine the applicability of the roadway geometric design standards to traffic engineering and safety projects for signing, marking, signal installation, and traffic barriers which include

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very minor or no roadway work. Formal findings of applicability are expected only as needed to resolve controversies.

(f) Exceptions. (1) Approval within the delegated authority provided by FHWA Order 1-1 [2] may be given on a project basis to designs which do not conform to the minimum criteria as set forth in the standards, policies, and standard specifications for:

(i) Experimental features on projects; and

(ii) Projects where conditions warrant that exceptions be made.

(2) The determination to approve a project design that does not conform to the minimum criteria is to be made only after due consideration is given to all project conditions such as maximum service and safety benefits for the dollar invested, compatibility with adjacent sections of roadway and the probable time before reconstruction of the section due to increased traffic demands or changed conditions.

[51 FR 16832, May 7, 1986]

§ 625.4 Standards, policies, and standard specifications.

The documents listed in this section are incorporated by reference in accordance with 5 U.S.C. 552(a) and are on file at the Office of the Federal Register in Washington, DC. They are available for inspection as noted in footnote numbers 1 and 2 in the appendix to this part.

(a) *Roadway and appurtenances.* (1) A Policy on Geometric Design of Highways and Streets, AASHTO 1984. [3]

(2) A Policy on Design Standards—Interstate System, AASHO 1967. [3]

(3) The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on highways other than freeways shall be the procedures and the design or design criteria established for individual projects, groups of projects, or all nonfreeway RRR projects in a State, and as approved by the FHWA. The other geometric design standards in this section do not apply to RRR projects on highways other than freeways, except as adopted on an individual State basis. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community, and environmental needs of the projects.

(4) A Policy on U-Turn Median Openings on Freeways, AASHO 1960. [3]

(5) A Policy on Access Between Adjacent Railroads and Interstate Highways, AASHO 1960. [3]

(6) Erosion and Sediment Control on Highway Construction Projects, FHWA, 23 CFR part 650, subpart B.

(7) Location and Hydraulic Design of Encroachments on Flood Plains, FHWA, 23 CFR part 650, subpart A.

(8) Water Supply and Sewage Treatment at Safety Rest Areas, FHWA, 23 CFR part 650, subpart E.

(9) Procedures for Abatement of Highway Traffic Noise and Construction Noise, FHWA, 23 CFR part 772.

(10) Accommodation of Utilities, FHWA, 23 CFR part 645, subpart B.

(11) Pavement Design, FHWA, 23 CFR part 626.

(b) *Bridges and structures.* (1) Standard Specifications for Highway Bridges, Thirteenth Edition, AASHTO 1983, and Interim Specifications, Bridges, AASHTO, issued annually, 1984 through 1988. [3]

(2) Standard Specifications for Movable Highway Bridges, AASHTO 1988. [3]

(3) Bridge Welding Code (D1.5-88), AASHTO/AWS 1988. [3, 4]

(4) Reinforcing Steel Welding Code AWS D 1.4-79. [4]

(5) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1985, and Interim Specifications, Bridges, AASHTO 1986 through 1988. For use on Federal-aid highway projects, the requirement for maximum change in velocity in Section 7, Breakaway Supports, may be 16 fps in lieu of the 15 fps contained in the AASHTO specifications. [3]

(6) Navigational Clearances for Bridges, FHWA, 23 CFR part 650, subpart H.

(c) *Materials.* (1) General Materials Requirements, FHWA, 23 CFR part 635, subpart D.

(2) Standard Specifications for Transportation Materials and Methods of Sampling and Testing, parts I and II, AASHTO 1986. [3]

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(3) Sampling and Testing of Materials and Construction, FHWA, 23 CFR part 637, subpart B.

[51 FR 16832, May 7, 1986, as amended at 52 FR 36247, Sept. 28, 1987; 54 FR 281, Jan. 5, 1989]

§ 625.5 Guides and references.

The following are citations to publications which are primarily informational or guidance in character and serve to assist the public in knowing those materials which are considered by FHWA to provide valuable information in attaining good design.

(a) *Roadway and appurtenances.* (1) An Informational Guide for Roadway Lighting, AASHTO 1984. [3]

(2) Highway Design and Operational Practices Related to Highway Safety, Report of the Special AASHTO Traffic Safety Committee, AASHTO 1974. [3]

(3) Roadside Design Guide, AASHTO 1989. [3]

(4) An Informational Guide on Fencing Controlled Access Highways, AASHO 1967. [3]

(5) An Informational Guide for Preparing Private Driveway Regulations for Major Highways, AASHO 1960. [3]

(6) Highway Capacity Special Report 209, Highway Capacity Manual, Transportation Research Board 1985. [5]

(7) Guidelines on Pavement Management, AASHTO 1985. [3]

(8) Handbook of Highway Safety Design and Operating Practices, FHWA 1978. [2]

(9) Skid Accident Reduction Program, T 5040.17, FHWA December 23, 1980. [2]

(10) Guidelines for Skid Resistant Pavement Design, AASHTO 1976. [3]

(11) Special Report 214, Designing Safer Roads, Practices for Resurfacing, Restoration, and Rehabilitation, TRB 1987. [5]

(12) AASHTO Guide for Design of Pavement Structures, AASHTO 1986. [3]

(b) *Bridges and structures.* (1) A Guide for Protective Screening of Overpass Structures, AASHO 1969. [3]

(2) Manual for Maintenance Inspection of Bridges, AASHTO 1983, and Interim Specifications, Bridges, AASHTO 1986 through 1988. [3]

(3) Guide Specifications for Fracture Critical Non-Redundant Steel Bridge Members, AASHTO 1978, and amending Interim Specifications, Bridges, AASHTO 1981 through 1987. [3]

(4) Guide Specifications for Horizontally Curved Highway Bridges, AASHTO 1980, and amending Interim Specifications, Bridges, AASHTO 1981 through 1988. [3]

(5) Guide Specifications for Seismic Design of Highway Bridges, AASHTO 1983, and amending Interim Specifications, Bridges, AASHTO 1985 through 1988. [3]

(6) Highway Drainage Guidelines, Volumes I through VIII, AASHTO 1987. [3]

(7) Manual on Subsurface Investigations, AASHTO, 1988. [3]

(8) Guide Specifications for Bridge Railings, AASHTO 1989. [3]

(c) *Other.* (1) Transportation Glossary, AASHTO 1983. [3]

(2) A Guide for Erecting Mailboxes on Highways, AASHTO 1984. [3]

(3) A Guide on Safety Rest Areas for the National System of Interstate and Defense Highways, AASHO 1968. [3]

(4) Guide for Development of New Bicycle Facilities, AASHTO 1981. [3]

(5) Guide Specifications for Highway Construction AASHTO 1985. [3]

[51 FR 16832, May 7, 1986, as amended at 53 FR 15671, May 3, 1988; 54 FR 281, Jan. 3, 1989; 54 FR 1844, Jan. 17, 1989; 54 FR 25117, June 13, 1989; 55 FR 25828, June 25, 1990]

Appendix A—Documents Cited in Part 625

1. The design standards listed in § 625.4 are incorporated by reference and are on file at the Office of the Federal Register in Washington, DC.

2. These documents may be reviewed at the Department of Transportation Library, 400 7th Street, SW., Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7, appendix D.

3. American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

4. American Welding Society, 2501 Northwest 7th Street, Miami, FL 33125.

5. Transportation Research Board, 2101 Constitution Avenue, NW., Washington, DC 20418.

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[51 FR 16832, May 7, 1986, as amended at 54 FR 282, Jan. 5, 1989]

PART 626—PAVEMENT POLICY

Sec.
626.1 Purpose.
626.3 Definitions.
626.5 Policy.
626.7 Eligibility.

AUTHORITY: 23 U.S.C. 101(e), 109, and 315; 49 CFR 1.48(b).

SOURCE: 54 FR 1357, Jan. 13, 1988, unless otherwise noted.

§ 626.1 Purpose.

To set forth a policy to select, design, and manage Federal-aid highway pavements in a cost-effective manner and identify pavement work eligible for Federal-aid funding.

§ 626.3 Definitions.

(a) *Analysis period.* The period of time for which the economic analysis is to be made.

(b) *Pavement maintenance.* All routine actions, both responsive and preventative, which are taken by the State or other parties to preserve the pavement structure, including joints, drainage, surface, and shoulders, as necessary for its safe and efficient utilization.

(c) *Pavement management system.* A set of tools or methods that assist decisionmakers in finding cost-effective strategies for providing, evaluating and maintaining pavements in a serviceable condition.

(d) *Pavement performance period.* The period of time that a newly constructed, rehabilitated or reconstructed pavement will perform before reaching its terminal serviceability. This may also be referred to as service life.

(e) *Pavement reconstruction.* Construction of the equivalent of a new pavement structure which usually involves complete removal and replacement of the existing pavement structure including new and/or recycled materials.

(f) *Pavement rehabilitation.* Resurfacing, restoration, and rehabilitation (3R) work undertaken to restore serviceability and to extend the service life of an existing facility. This may include partial recycling of the existing pavement, placement of additional surface materials or other work necessary to return an existing pavement, including shoulders, to a condition of structural or functional adequacy.

(g) *Pavement structure.* A combination of a subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

§ 626.5 Policy.

(a) *Pavement Management System.* Each State highway agency (SHA) shall have a pavement management system (PMS) that is acceptable to the FHWA and is based on concepts described in American Association of State Highway and Transportation Officials publications including its 1985 "Guidelines on Pavement Management." The SHA's PMS shall cover all Rural Arterial (Interstate, other Principal Arterials and Minor Arterials) and Urban Principal Arterial (Interstate, other Freeways and Expressways, and Other Principal Arterials) routes under its jurisdiction. The expansion of a SHA's PMS to include all rural and urban arterials, regardless of jurisdiction, is desirable. The development of a local PMS for pavements under local jurisdiction is also desirable. The SHA's PMS shall be operational within a reasonable period of time, not to exceed 4 years from January 13, 1989.

(b) *Pavement Design—New and Reconstructed Pavements.* Each SHA shall have a process that is acceptable to the FHWA for the type selection and design of new and reconstructed pavement structures. The type selection process shall include an engineering and economic analysis for alternate designs. The analysis period selected shall be the same for all alternates being considered.

(c) *Pavement Design—Rehabilitated Pavements.* Each SHA shall have a pavement rehabilitation selection process that is acceptable to the FHWA and that includes identification of candidate solutions and a methodology for structural design. For pavements approaching terminal serviceability and exhibiting significant

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structural deficiencies, the process shall include procedures for making an engineering and economic analysis of alternative rehabilitation strategies. These alternative rehabilitation strategies should include both reconstruction and rehabilitation alternatives.

(d) *Safety.* Each project involving construction of a pavement shall have a skid resistant surface. Pavement rehabilitation and reconstruction projects shall also incorporate other cost-effective opportunities to enhance safety as required by 23 CFR part 625.2.

§ 626.7 Eligibility.

(a) *New and Reconstructed Pavements.* To be eligible for Federal-aid funding, the design of new and reconstructed pavement structures shall be a cost-effective solution based on the State's pavement type selection and pavement design processes.

(b) *Rehabilitated (3R) Pavements.* To be eligible for Federal-aid funding, the design of rehabilitation pavement projects on routes classified as Interstate, Other Principal Arterials (rural and urban), and Other Freeways and Expressways, regardless of jurisdiction, shall provide for a performance period of at least 8 years. The FHWA may approve exceptions to the 8-year performance requirement when the State's historical performance data indicate that a lesser period would be appropriate. A minimum performance period of 5 years may be approved for all other Federal-aid pavement rehabilitation projects.

(c) *Pavement Maintenance.* Pavement maintenance as defined under 23 CFR part 626.3(b) is not eligible for Federal-aid funding.

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—Federal-Aid Programs Approval and Project Authorization

Sec.
630.102 Purpose.
630.104 Definitions.
630.106 Policy.
630.108 Program submissions.
630.110 General requirements.
630.112 Approval of programs.
630.114 Authorization to proceed.

Subpart B—Plans, Specifications, and Estimates

630.201 Purpose.
630.203 Applicability.
630.205 Preparation, submission, and approval.

Subpart C—Project Agreements

630.301 Purpose.
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Sec.
630.1010 Contents of the agency procedures.

AUTHORITY: 23 U.S.C. 101(a), 104, 109, 110, 113, 115, 120(f), 121(c), 125, 315, 320; 23 CFR 1.32, 49 CFR 1.48(b), unless otherwise noted.

Subpart A—Federal-Aid Programs Approval and Project Authorization

AUTHORITY: 23 U.S.C. 105, 106, 118, 134, and 315; 49 CFR 1.48(b) unless otherwise noted.

SOURCE: 43 FR 34461, Aug. 4, 1978, unless otherwise noted.

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies and procedures for preparation, submission and approval of programs for utilization of highway funds and to describe project authorization procedures.

§ 630.104 Definitions.

Terms used in this regulation are as defined in 23 U.S.C. 101(a).

§ 630.106 Policy.

(a) Annually, any State highway agency (SHA) desiring to avail itself of Federal-aid funds shall develop and submit a program(s) of projects which reflect projects proposed for utilization of available apportioned and certain allocated Federal-aid funds during any 12 consecutive month program period.

(b) In recognition of the national concern that this country practice rigorous energy conservation, and in further recognition that highway transportation is a major consumer of petroleum-based fuels, the planning, design, construction, management, and operation of the Federal-aid highway system shall be conducted in a manner that conserves fuel, maintains the greatest degree of personal and economic mobility consistent with the availability of fuel, and maintains a state of emergency preparedness in the event of an abrupt fuel curtailment. Energy conservation is a national goal of utmost importance which must be supported by, and incorporated into, the processes for the programming and authorization of Federal-aid projects.

(c) A program(s) of projects is needed to assure:

(1) An appropriate planning effort by the SHA,

(2) That each SHA considers national goals, objectives, and emphasis areas as set forth in legislation, or as promulgated by the Federal Highway Administrator in developing its Federal-aid program(s).

[43 FR 34461, Aug. 4, 1978, as amended at 45 FR 58036, Aug. 29, 1980]

§ 630.108 Program submissions.

(a) The program(s) shall be submitted for approval to the FHWA Administrator in a form and at times mutually agreeable with the SHA.

(b) The program(s) shall include those projects for which the SHA expects to request authorization during the program period. A project may encompass one or more phases of work, including preliminary engineering (PE), right-of-way (ROW), and physical construction.

(c) The program(s) shall identify the classes of funds involved, and the relationship of the total funds to the amounts expected to be available during the program period.

(d) The SHA shall furnish the FHWA Administrator all information requested to support program approval action.

(e) Projects involving special procedures or special funds authorizations, shall be supported and programed as required by the implementing directives issued to cover such funds.

(f) The Federal-aid program for high-hazard location, elimination of roadside obstacles, special bridge replacement, and elimination of hazards of railway-highway crossing projects may consist of a line item for each category describing the planned level of effort (fund utilization). Selection of projects for authorization shall result from a priority process established pursuant to the appropriate statutory requirements.

§ 630.110 General requirements.

(a) In preparing the program(s), appropriate consideration shall be given to the statutory system requirement.

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(b) In preparing the program the SHA shall give consideration to projects identified as energy conserving, such as, but not limited to, public transportation, ridesharing activities and facilities, bicycle and pedestrian facilities, traffic signalization and control, HOV facilities, and resurfacing, restoration, and rehabilitation (3-R) work. The program shall include a discussion of the priority to be given to such projects, consistent with energy conservation aspects of Statewide and urban comprehensive transportation planning, and the contribution toward achieving energy conservation goals or targets.

(c) Projects for utilizing secondary system funds shall be selected cooperatively by the SHA and the appropriate local officials except where all public roads and highways are under the control and supervision of the SHA. In the excepted case, selection shall be made after consultation with appropriate local officials. Acceptable evidence of cooperation or consultation is:

(1) A statement to that effect from the SHA accompanying the program submission; or

(2) A procedure contained in an accepted State certification (23 CFR part 640), approved secondary road plan (23 CFR part 642), or State procedures accepted under 23 U.S.C. 109(h).

(d) Projects in urbanized areas shall:

(1) Be based on a planning process pursuant to 23 U.S.C. 134 (23 CFR part 450, subpart A), and

(2) Be drawn from the annual element/transportation improvement program (AE/TIP) in accordance with 23 CFR part 450, subpart B. Primary and interstate safety projects are exempt from the AE/TIP requirement, if included in the highway safety program.

(e) Projects for utilizing urban system funds shall be selected by appropriate local officials with the concurrence of the SHA.

(1) In urbanized areas, inclusion of urban system projects in the AE/TIP meets the requirements for selection by local officials.

(2) In other than urbanized areas, selection by local officials may be evidenced by:

(i) A procedure contained in an accepted State certification, approved secondary road plan, or State procedures accepted under 23 U.S.C. 109(h), or

(ii) A statement from the SHA accompanying the program submission certifying the selection by local officials.

(f) Work of a minor miscellaneous nature, at a number of separate locations, may be grouped by type of work and class of funds and included as a single statewide or areawide project or line item in the appropriate program(s).

(g) The FHWA Division Administrator shall ensure that the provisions of E.O. 12372 (49 CFR part 17) regarding the Intergovernmental Review of DOT Programs are complied with as soon as practicable in the development of a project.

(h) Projects shall be in conformity with State air quality implementation plans (23 CFR part 770) revised pursuant to Part D of title I of the Clean Air Act.

(Sec. 111 of the Federal-Aid Highway Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 105(b); 49 CFR 1.48(b), sec. 403(b), Pub. L. 95-620; E.O. 12185; 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 109(h), 138, 315; 49 U.S.C. 1653(f); 49 CFR 1.48(b))

[43 FR 34461, Aug. 4, 1978, as amended at 44 FR 11542, Mar. 1, 1979; 45 FR 58036, Aug. 29, 1980; 47 FR 47239, Oct. 25, 1982; 51 FR 39748, Oct. 31, 1986]

§ 630.112 Approval of programs.

(a) The FHWA Division Administrator will first review the program to assure that it provides adequate consideration of and represents an aggressive effort toward energy conservation in the number and types of projects which offer high potential for conserving energy in accordance with State and national goals or targets.

(b) The FHWA Administrator will notify the SHA in writing of the action taken on the program submission, indicating approval in whole or in part and any qualifications or conditions determined necessary.

(c) Program approval will indicate Federal agreement with the SHA's list of proposed projects. It does not constitute an obligation of funds, nor es-

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tablish a date of eligibility for Federal funding.

(d) [Reserved]

(e) Approved programs may be modified during the program period as necessary to reflect additional funds, new areas of emphasis, changes in length or termini, or changes in project priorities. No modification is required to reflect changes in class of funding except where local project selection is required.

(f) Highway projects will be approved by the FHWA Administrator. Nonhighway public mass transit projects as defined in 23 CFR 810.4(b)(6) are approved by the Urban Mass Transportation Administrator in accordance with 23 CFR part 810 (FHPM 6-3-4). If a nonhighway public mass transit project proposed for urban system funding included in an AE/TIP is omitted from the program, action on the urban system funded program for that urbanized area will be taken jointly in accordance with 23 CFR part 450.212(a)(1)(iii) by both Administrators.

(g) At the end of the program period, projects for which initial authorizations have not been issued will retain program status until the next program is approved. Projects not receiving initial authorizations that are not included in the next year's program(s) lose their program status. These projects may be reprogramed later.

(Sec. 403(b), Pub. L. 95-620; E.O. 12185)

[43 FR 34461, Aug. 4, 1978, as amended at 45 FR 58037, Aug. 29, 1980; 51 FR 39748, Oct. 31, 1986]

§ 630.114 Authorization to proceed.

(a) With each authorization, the FHWA Division Administrator shall review the level of program implementation to assure that the energy conservation projects are proceeding at a rate consistent with implementation of other categories of projects. The FHWA Division Administrator shall also assure that energy efficiency is a basic objective in the design and construction of projects.

(b) The FHWA issuance of an authorization to proceed with the work on any phase of a highway project, including those under certification acceptance and secondary road plan, shall be in response to a request from the SHA. Authorization can be given only after applicable prerequisite requirements of Federal laws, and implementing regulations and directives have been satisfied, e.g., A-95 clearinghouse review and standards as prescribed by 23 U.S.C. 109.

(c) Authorizations to proceed subsequent to program approval for nonhighway public mass transit projects are issued by the Urban Mass Transportation Administrator in accordance with 23 CFR part 810 (FHPM 6-3-4).

(d) The initial authorization to proceed with a phase of work shall be based on an approved item providing for that phase of work in a current program.

(e) Projects in urbanized areas can be authorized only after the responsible public officials or jurisdictions in which the project is located have been consulted and their views considered with respect to the corridor, the location and the design of the project.

(f) Authorization to proceed with a project may be given for a complete phase or phases of work, or a portion of a phase of work. Additional authorizations within the same phase(s) of work do not require further programing, if such authorizations are within the scope of the programed project and provide for a timely completion of the project.

(g) Federal funds shall not participate in costs incurred prior to the date of authorization to proceed.

(h) Authorization to proceed with work shall be deemed a contractual obligation of the Federal Government under 23 U.S.C. 106 and shall require the appropriate funds be available for the full Federal share of the cost of work authorized except as follows:

(1) Advance construction projects.

(2) Bond issue projects.

(3) The preliminary studies portion of the PE and ROW phase(s) (including hardship acquisition and protective buying) through the location stage (i.e., from the end of system planning through the selection of a particular location), when an SHA requests authorization with obligation of funds. The written notice to an SHA approving its request will contain the

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following statement: "Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for the undertaking." When a project has received an authorization as permitted above, subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover the previous authorization.

(4) Where a State lacks either Federal funds or obligational authority, the approval to underfinance work may be given, but only with the understanding that the dollar amount of Federal-aid participation is limited to the amount committed at the time of fund obligation or the legal pro rata, whichever is less.

(5) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(i) No project shall be authorized that will result in the severance or destruction of an existing major route for non-motorized transportation traffic and light motorcycles, unless such project provides a reasonably alternate route or such a route exists.

[43 FR 34461, Aug. 4, 1978, as amended at 44 FR 46835, Aug. 9, 1979; 45 FR 58037, Aug. 29, 1980; 47 FR 47239, Oct. 25, 1982]

Subpart B—Plans, Specifications, and Estimates

AUTHORITY: 23 U.S.C. 106, 315; 49 CFR 1.48(b).

SOURCE: 43 FR 58564, Dec. 15, 1978, unless otherwise noted.

§ 630.201 Purpose.

The purpose of this subpart is to prescribe Federal Highway Administration (FHWA) procedures relating to the preparation, submission, and approval of plans, specifications and estimates (PS&E), and supporting documents for Federal-aid projects.

§ 630.203 Applicability.

The provisions of this regulation apply to all highway construction projects financed in whole or in part with Federal-aid highway funds and to be undertaken by a State or political subdivision, except for projects carried out pursuant to 23 U.S.C. 117 relative to certification acceptance or a secondary road plan.

§ 630.205 Preparation, submission, and approval.

(a) The contents and number of copies of the PS&E assembly shall be determined by the FHWA.

(b) Plans and specifications shall describe the location and design features and the construction requirements in sufficient detail to facilitate the construction, the contract control and the estimation of construction costs of the project. The estimate shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the State and FHWA and to permit an effectice review and comparison of the bids received.

(c) PS&E assemblies for Federal-aid highway projects shall be submitted to the FHWA for approval.

(d) The State highway agency (SHA) shall be advised of approval of the PS&E by the FHWA.

(e) No project or part thereof for actual construction shall be advertised for contract nor work commenced by force account until the PS&E has been approved by the FHWA and the SHA has been so notified.

Subpart C—Project Agreements

§ 630.301 Purpose.

The purpose of the regulations in this subpart is to prescribe the form and procedures for the preparation and execution of the project agreement required by 23 U.S.C. 110(a) for Federal-aid projects, except for forest highway projects pursuant to 23 U.S.C. 204, and for nonhighway public mass transit projects pursuant to 23 U.S.C. 103(e)(4), 142(a)(2), and 142(c).

[39 FR 35348, Oct. 1, 1974]

§ 630.302 Definitions.

(a) The term *bond issue project* means a project authorized pursuant to 23 U.S.C. 122.

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(b) The term *calendar day* means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

(c) The term *certification acceptance project* means a project which is constructed under the terms of a State Certification as authorized by 23 U.S.C. 117 and 23 CFR part 640.

(d) The term *contract time* means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

(e) The term *Division Administrator* means the chief Federal Highway Administration (FHWA) officer assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

(f) The term *Federal-aid highway project* means a project, other than an HP&R project, funded in whole or in part, with sums apportioned pursuant to Title 23, United States Code and section 203(d) of the Highway Safety Act of 1973.

(g) The term *highway planning and research project* (HP&R) means a project funded pursuant to 23 U.S.C. 307(c) and 104(f).

(h) The term *incentive/disincentive for early completion,* as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

(i) The term *liquidated damages* means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State highway agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

(j) The term *State highway agency* has the same meaning as that given for *State highway department* in 23 U.S.C. 101.

(k) The word *workday* means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 64191, Feb. 12, 1975; 40 FR 55639, Dec. 1, 1975; 52 FR 31390, Aug. 20, 1987]

§ 630.303 Policy.

(a) The State highway agency shall prepare a project agreement for each Federal-aid highway, and highway planning and research project eligible for Federal-aid funding. An original agreement shall be prepared on FHWA Form PR-2 (appendix A), and amendments to or modification of such original agreement shall be prepared on FHWA Form PR-2A (appendix B). Agreements for projects under the National Cooperative Highway Research Program (NCHRP) shall be prepared on FHWA Form PR-2.1 (appendix C).

(b) Project agreements, and modifications of and amendments thereto, shall evidence acceptance by the State highway agency of:

(1) Conditions to payment of Federal funds as prescribed by Federal statutes and regulations; and

(2) The amount of Federal funds obligated.

[39 FR 35348, Oct. 1, 1974]

§ 630.304 Preparation of agreement.

(a) The purposes of the Form PR-2 are:

(1) To cover the various types of projects and kinds of work to be undertaken;

(2) To indicate the effective date governing reimbursement of the Federal share of eligible items of cost;

(3) To show the total amount of Federal funds obligated and under agreement for the project; and

(4) To set forth any special provisions relating to the project.

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(b) The Division Administrator pursuant to his delegated authority shall on behalf of FHWA execute the project agreement of modification or amendment thereof when he is satisfied that the agreement, or modification or amendment thereof, is properly prepared and not at variance with any statutory or regulatory requirements pursuant to Federal laws.

(c) The Form PR-2 shall be utilized as follows:

(1) All information normally required for proper preparation of Form PR-2 can be placed on the first page of the form. All signatures will appear on that page in the spaces provided. Separate project agreements will be prepared for each successive improvement or independent class of work subject to Federal funding that is not to be performed contemporaneously with other work, between the same termini.

(2) Provisions 1 through 20 of Form PR-2 contain special provisions to apply to agreements for individual projects. The special provisions which apply to a particular project will be governed by the project identification determined in accordance with vol. 6, chap. 3, section 2 of the Federal-Aid Highway Program Manual. Those special provisions applicable to a particular project become automatically incorporated in the project agreement by means of such project identification.

(3) Space is provided on Form PR-2 for listing additional provisions applicable to a particular project. If necessary, attachments to Form PR-2 may be made. This space will also be utilized as follows:

(i) When Federal funds are to participate in the cost of constructing a toll facility, to reference the agreement required by 23 U.S.C. 129;

(ii) When a Federal agency is to undertake a Federal-aid project, to reference the agreement between the State and such Federal agency required by 23 U.S.C. 132, and to set forth the amount of the State deposit or payment to such Federal agency.

(iii) When a State is to undertake federally financed or assisted work on public lands highways (23 U.S.C. 209) or defense access highways (23 U.S.C. 210), to reference the applicable section of Title 23, United States Code.

(iv) When there is an agreement between the State and a local unit of Government with provisions for parking regulations and traffic control.

(4) For HP&R project, no entry will be made in the space labeled "COUNTY." For all other projects, the county or counties in which the project is located will be shown.

(5) The space labeled "PROJECT TERMINI" is for identifying the location of projects by termini, such as "three miles east of Excell to four miles west of Clark." The U.S., State, or county route number, if any, shall be shown, or indication given that the project is located on a county or local road. Engineering stations may not be used. Special Highway Planning and Research Projects shall be identified in this space by project type (National Pooled Fund Studies (NPFS)) or (Intra-Regional Cooperative Studies (IRCS)) and title of the study.

(6) The spaces under the heading "EFFECTIVE DATE OF AUTHORIZATION" will be utilized to show the date subsequent to which any item of cost set forth in the spaces specifically labeled under the heading "PROJECT CLASSIFICATION OR PHASE OF WORK" is eligible for Federal participation.

(7) The space labeled "OTHER" under the heading "PROJECT CLASSIFICATION OR PHASE OF WORK" will be used to set forth a project classification or class of work not specifically labeled in the spaces immediately above "OTHER."

(8) In the spaces labeled "APPROXIMATE LENGTH (Miles)" the length of preliminary engineering and construction work will be shown to the nearest tenth of a mile.

(9) In the space labeled "ESTIMATED TOTAL COST OF PROJECT" the sum of the estimated costs for all project classifications or classes of work set forth above in the agreement as applicable to the particular project will be entered. For construction work, the amount entered will be based on the contract price plus contingencies and/or the force account estimates approved by the Division Administrator.

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(10) In the space labeled "FEDERAL FUNDS" the sum of the Federal funds for all project classifications or classes of work as applicable to the particular project will be entered. For bond issue projects and projects to be constructed in advance of apportionments pursuant to 23 U.S.C. 115, the amount entered will be based on an estimate of Federal funds to be subsequently apportioned. Any portion of a project being retained in a "programmed only" status shall not be included in a project agreement.

(d) The original agreement and one copy thereof will be executed by the proper officer of the State highway agency and forwarded to the Division Administrator for review and execution. The Division Administrator will retain the original agreement as part of the project status records. One executed copy will be returned to the State highway agency. When required by the regional office, a conformed copy will be sent to that office.

(e) HP&R agreements will be prepared and executed when the State has been authorized to proceed with the HP&R work program in whole or in part. If the agreement covers only a part of the work program, it shall be amended at the time or times when the State is authorized to proceed with the remaining part or parts. Agreements for Special Highway Planning and Research projects will be prepared and executed separately from the annual HP&R agreements.

(Approved by the Office of Management and Budget under control number 2125-0529)

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 55639, Dec. 1, 1975; 41 FR 33253, Aug. 9, 1976; 49 FR 33008, Aug. 20, 1984]

§ 630.305 Agreement provisions regarding overruns in contract time.

(a) Each State highway agency (SHA) shall establish specific liquidated damages rates applicable to projects in that State. The rates may be project-specific or may be in the form of a table or schedule developed for a range of project costs and/or project types. These rates shall, as a minimum, be established to cover the estimated average daily construction engineering (CE) costs associated with the type of work encountered on the project. The amounts shall be assessed by means of deductions, for each calendar day or workday overrun in contract time, from payments otherwise due to the contractor for performance in accordance with the contract terms.

(b) The rates established shall be subject to FHWA approval either on a project-by-project basis, in the case of project-specific rates, or on a periodic basis after initial approval where a rate table or schedule is used. In the latter case, the SHA shall periodically review its cost data to ascertain if the rate table/schedule closely approximates, at a minimum, the actual average daily CE costs associated with the type and size of the projects in the State. Where rate schedules or other means are already included in the SHA specifications or standard special provisions, verification by the SHA that the amounts are adequate shall be submitted to the FHWA for review and approval. After initial approval by the FHWA of the rates, the SHA shall review the rates at least every 2 years and provide updated rates, when necessary, for FHWA approval. If updated rates are not warranted, justification of this fact is to be sent to the FHWA for review and acceptance.

(c) The SHA may, with FHWA concurrence, include additional amounts as liquidated damages in each contract to cover other anticipated costs of project related delays or inconveniences to the SHA or the public. Costs resulting from winter shutdowns, retaining detours for an extended time, additional demurrage, or similar costs as well as road user delay costs may be included.

(d) In addition to the liquidated damages provisions, the SHA may also include incentive/disincentive for early completion provisions in the contract. The incentive/disincentive amounts shall be shown separately from the liquidated damages amounts.

(e) When there has been an overrun in contract time, the following principles shall apply in determining the cost of a project that is eligible for Federal-aid reimbursement:

(1) A proportional share, as used in this section, is the ratio of the final contract construction costs eligible for

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Federal participation to the final total contract construction costs of the project.

(2) Where CE costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damages rates cover only CE expenses, the total CE costs for the project shall be reduced by the assessed liquidated damages amounts prior to figuring any Federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess shall be deducted from the federally participating contract construction cost before determining the final Federal share.

(3) Where the SHA is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total contract construction amount that would be eligible for Federal participation shall be reduced by a proportional share of the total liquidated damages amounts assessed on the project.

(4) Where liquidated damages include extra anticipated non-CE costs due to contractor caused delays, the amount assessed shall be used to pay for the actual non-CE expenses incurred by the SHA, and, if a Federal participating item(s) is involved, to reduce the Federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred by the SHA, a proportional share of the excess shall be deducted from the federally participating contract construction cost of the project before the Federal share is figured.

(f) When provisions for incentive/disincentive for early completion are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor shall be added to the federally participating contract construction cost before calculating the Federal share. When the disincentive provision is applicable, a proportion of the amount assessed the contractor shall be deducted from the federally participating contract construction cost before the Federal share calculation. Proportions are to be calculated in the same manner as set forth in paragraph (e)(1) of this section.

[52 FR 31390, Aug. 20, 1987]

§ 630.306 Modification of original agreement.

(a) Form PR-2A (appendix B) shall be used for all amendments to or modifications of the original project agreement. Ordinarily, such modification will be needed only to increase the amount of Federal funds to cover approved changes. At the final voucher stage where modification is necessary only to provide for normal overruns or underruns of previously estimated costs, no additional support is required. The final voucher will be sufficient for that purpose.

(b) If the modification is for the purpose of revising the estimated total cost of the project and the applicable Federal funds to cover changed conditions not provided for by change orders approved by the Division Administrator, the reason therefor shall be set forth in the space headed "Other revisions."

[39 FR 35348, Oct. 1, 1974, as amended at 40 FR 55640, Dec. 1, 1975]

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APPENDICES TO SUBPART C

APPENDIX A—FEDERAL-AID PROJECT AGREEMENT, FORM PR-2

TO BE COMPLETED BY FHWA	US Department of Transportation Federal Highway Administration — FEDERAL-AID PROJECT AGREEMENT	STATE COUNTY PROJECT NO.

The State, through its Highway Agency, having complied, or hereby agreeing to comply, with the applicable terms and conditions set forth in (1) Title 23, U.S. Code, Highways, (2) the Regulations issued pursuant thereto and, (3) the policies and procedures promulgated by the Federal Highway Administrator relative to the above designated project, and the Federal Highway Administration having authorized certain work to proceed as evidenced by the date entered opposite the specific item of work, Federal funds are obligated for the project not to exceed the amount shown herein, the balance of the estimated total cost being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the Federal Highway Administration authorization to proceed with the project involving such costs.

PROJECT TERMINI

PROJECT CLASSIFICATION OR PHASE OF WORK	EFFECTIVE DATE OF AUTHORIZATION	APPROXIMATE LENGTH *(Miles)*
HIGHWAY PLANNING AND RESEARCH (HP & R)		
PRELIMINARY ENGINEERING		
RIGHTS-OF-WAY		
CONSTRUCTION		

OTHER *(Specify)*

FUNDS	
ESTIMATED TOTAL COST OF PROJECT	FEDERAL FUNDS
$	$

The State further stipulates that as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions set forth on the following pages.

_____
(Official name of Highway Agency)

By _____

_____
(Title)

By _____

_____
(Title)

By _____

_____
(Title)

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
(Division Administrator)

Date executed by Division Administrator _____

FORM PR-2 (REV. 1-84) PREVIOUS EDITIONS ARE OBSOLETE

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AGREEMENT PROVISIONS

1. *Responsibility for Work*

a. Except for projects constructed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in compliance with the approved plans and specifications or project proposal which, by reference, are made a part hereof.

b. With regard to projects performed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in accordance with the terms of its approved Certification, or exceptions thereto as may have been approved by the Federal Highway Administration.

2. *Highway Planning and Research (HP&R) Project.*

The State highway agency will (a) conduct or cause to be conducted, under its direct control, engineering and economic investigations of projects for future construction, together with highway research necessary in connection therewith, pursuant to the work program approved by the Federal Highway Administration and (b) prepare reports suitable for publication of the result of such investigations and research, but no report will be published without the prior approval of the Federal Highway Administration.

3. *Project for Acquisition of Rights-of-Way.*

In the event that actual construction of a road on this right-of-way is not undertaken by the close of the tenth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

4. *Prelimary Engineering Projects.*

In the event that right-of-way acquisition for, or actual construction of the road for which this preliminary engineering is undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

5. *Interstate System Project.*

a. The State highway agency will not add or permit to be added, without the prior approval of the Federal Highway Administration any points of access to, or exit from, the project in addition to those approved in the plans and specifications for the project.

b. The State highway agency will not permit automotive service stations, or other commercial establishments for serving motor vehicle users, to be constructed or located on the right-of-way of the interstate system.

c. The State highway agency will not after June 30, 1968, permit the construction of any portion of the Interstate Route on which this project is located, including spurs and loops, as a toll road without the written concurrence of the Secretary of Transportation or his officially designated representative. The term 'toll road' does not include toll bridges or toll tunnels.

6. *Project for Construction in Advance of Apportionment.*

a. This project authorized pursuant to 23 U.S.C. 115 as amended, will be subject to all procedures and requirements, and conform to the standards applicable to projects on the system on which located, financed with the aid of Federal funds.

b. No present or immediate obligation of Federal funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway agency, and approval thereof by the Federal Highway Administration, any Federal-aid funds of the class designated by the project number prefix, apportioned or allocated to the State under 23 U.S.C. 103(e)(4), 104, or 144 subsequent to the date of this agreement, may be used to reimburse the State for the Federal share of the cost of work done on the project.

7. *Stage Construction.*

The State highway agency agrees that all stages of construction necessary to provide the initially planned complete facility, within the limits of this project, will conform to at least the minimum values set by approved AASHTO design standards applicable to this class of highways, even though such additional work is financed without Federal-aid participation.

8. *Bond Issue Project.*

Construction, inspection and maintenance of the project will be accomplished in the same manner as for regular Federal-aid projects. No present or immediate obligations is created by this Agreement against Federal funds, its purpose and intent being to provide aid to the State, as authorized by 23 U.S.C. 122, for retiring maturities of the principal indebtedness of the bonds referred to below. When the State requests Federal reimbursement to aid in the retirement of such bonds, the request will be supported by the appropriate certification required by 23 CFR part 140, subpart F, and volume 1, chapter 4, section 8 of the Federal-Aid Highway Program Manual, and payment of the

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authorized Federal share will be made from appropriate funds available. If in any year there is no obligated balance of any apportioned Federal funds available from which payments hereunder may be made, there will be no obligation on the part of the Federal Government on account of bond maturities for that year. Funds available to the highway agency for this project are the proceeds of bonds issued by the governmental unit indicated on the attached tabulation, pursuant to the authority and in the amounts by date of issue and beginning date of maturities set forth therein.

9. *Special Highway Planning and Research Project.*

The State highway agency hereby authorizes the Federal Highway Administration to charge the State's pro rata share of costs incurred against funds apportioned to the State under 23 U.S.C. 307(c), as amended. In the event a project is financed with both Federal-aid funds and State matching funds, the State agrees to advance to The Federal Highway Administration the State matching funds for its share of the estimated cost. For a National Pooled Fund study, the State hereby assigns its responsibility for the work to the Federal Highway Administration. For an Intra-Regional Cooperative Study, the State hereby assigns its responsibility for the work to the lead State for the study.

10. *Parking Regulation and Traffic Control.*

The State highway agency will not permit any changes to be made in the provisions for parking regulations and traffic control as contained in the agreement between the State and the local unit of Government referred to in the paragraph on "Additional Provisions," without the prior approval of the Federal Highway Administration, unless the State determines, and the Division Administrator concurs, that the local unit of Government has a functioning traffic engineering unit with the demonstrated ability to apply and maintain sound traffic operations and control.

11. *Signing and Marking.*

The State highway agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administrator pursuant to 23 U.S.C. 109(d) or the State's Certificate as applicable.

12. *Maintenance.*

The State highway agency will maintain, or by formal agreement with appropriate officials of a county or municipal government cause to be maintained, the project covered by this agreement.

13. *Liquidated Damages.*

The State highway agency agrees that on Federal-aid highway construction projects not under Certification Acceptance the provisions of 23 CFR part 630, subpart C and volume 6, chapter 3, section 1 of the Federal-Aid Highway Program Manual, as supplemented, relative to the basis of Federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

14. *Implementation of Clear Air Act and Federal Water Pollution Control Act (applicable to contracts and subcontracts which exceed $100,000).*

a. The State highway agency stipulates that any facility to be utilized in performance under or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

b. The State highway agency agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

c. The State highway agency stipulates that as a condition of Federal aid pursuant to this agreement it shall notify the Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this agreement is under consideration to be listed on the EPA List of Violating Facilities.

d. The State highway department agrees that it will include or cause to be included in any Federal-aid to highways agreement with a political subdivision of the State which exceeds $100,000 the criteria and requirements in these subparagraphs a. through d.

15. *Equal Opportunity.*

The State highway agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR appter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

"During the performance of this contract, the contractor agrees as follows:

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a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway agency setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway agency advising the said labor union or workers' representative of the contractor's commitments under section 202 of the Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of section 202 of Executive Order 11246 of September 24, 1965, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however,* that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

The State highway agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The State highway agency also agrees:

(1) To assist and cooperate actively with the Federal Highway Administration and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the Federal Highway Administration and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Federal Highway Administration in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Federal Highway Administration or the Secretary of Labor

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pursuant to part II, subpart D of the Executive Order.

In addition, the State highway agency agrees that if it fails or refuses to comply with these undertakings, the Federal Highway Administration may take any or all of the following actions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

(b) Refrain from extending any further assistance to the State highway agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the State highway agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

16. *Nondiscrimination.*

The State highway agency (SHA) hereby agrees that it will comply with title VI of the 1964 Civil Rights Act and related statutes and implementing regulations to the end that no person shall on the grounds of race, color, national origin, handicap, age, sex, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the project covered by this agreement and, further, the SHA agrees that:

a. It will insert the nondiscrimination notice required by the Standard Department of Transporation (DOT) title VI Assurance (DOT Order 1050.2) in all solicitations for bids for work or material, and, in adapted form, in all proposals for negotiated agreements.

b. It will insert the clauses in appendixes A, B, or C of DOT Order 1050.2, as appropriate, in all contracts, deeds transferring real property, structures, or improvements thereon or interest therein (as a covenant running with the land) and in future deeds, leases, permits, licenses, and similar agreements, related to this project, entered into by the SHA with other parties.

c. It will comply with, and cooperate with, FHWA in ensuring compliance with the terms of the standard title VI Assurance, the act and related statutes, and implementing regulations.

17. *Minority Business Enterprises (MBE's).*

a. The State highway agency hereby agrees to the following statements and agrees that these statements shall be included in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor:

(1) "Policy. It is the policy of the Department of Transportation that minority business enterprises (MBE's), as they are defined in 49 CFR part 23 [for the purposes of 49 CFR part 23, subpart D, MBE's refer to disadvantaged business enterprises (DBE's); for the purposes of other subparts of part 23, MBE's include women's business enterprises (WBE's)], shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, all applicable requirements of 49 CFR part 23 apply to this agreement.

(2) "Obligation. The recipient or its contractor agrees to ensure that MBE's, as defined in 49 CFR part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with the applicable section of 49 CFR part 23 to ensure that MBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, handicap, religion, age, or sex, as provided in Federal and State law, in the award and performance of DOT-assisted contracts."

b. If, as a condition of assistance, the recipient has submitted and the Department has approved an MBE affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program, the Department shall impose such sanctions as are noted in 49 CFR part 23, subparts D or E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance.

18. *Bicycle Transportation and Pedestrian Walkways.*

No motorized vehicles shall be permitted on bikeways or walkways authorized under this project except for maintenance purposes and, when snow conditions and State or local regulations permit, snowmobiles.

19. *Modified or Terminated Highway Projects.*

For certain projects described in 23 CFR part 480 or as prescribed in other parts of title 23, Code of Federal Regulations, the payback provisions found in these parts shall supersede provisions 3 and 4 of this agreement.

20. *Environmental Impact Mitigation Features.*

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ADDITIONAL PROVISIONS

The State highway agency shall ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

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Appendix B to Subpart C—Modification of Federal-Aid Project Agreement, Form PR-2A

TO BE COMPLETED BY FHWA	U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	Form Approved; O M B No. 04-R2069
MONTHLY TRANSACTION NUMBER		State
PROJECT REPORT NUMBER	MODIFICATION OF FEDERAL-AID PROJECT AGREEMENT	County
MODIFICATION NUMBER		Project Number

The Project Agreement for the above-referenced project entered into between the undersigned parties and executed by the Division Administrator on , 19 is hereby modified as follows:

	Former amount	Revised amount
Estimated total cost of project	$	$
Federal funds	$	$
Other revisions		

This modification is made for the following reasons:

All other terms and conditions of the Project Agreement will remain in full force and effect. This modification is effective as of the day of , 19

_____
(Official name of Highway Agency)

By _____

_____
(Title)

By _____

_____
(Title)

By _____

_____
(Title)

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
(Division Administrator)

Form PR-2A (Rev. 10-75) Previous editions are obsolete GPO 888-818

[40 FR 55643, Dec. 1, 1975]

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APPENDIX C TO SUBPART C—FEDERAL-AID PROJECT AGREEMENT (NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM), FORM PR-2.1

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION **FEDERAL-AID PROJECT AGREEMENT** (National Cooperative Highway Research Program)	1. STATE 2. PROJECT NUMBER

SECTION 1—AGREEMENT PROVISIONS

In conformance with arrangements for financing the National Cooperative Highway Research Program, hereinafter referred to as the "NCHRP," pursuant to the Memorandum Agreement effective June 29, 1965, as amended, between the Federal Highway Administration, hereinafter referred to as "FHWA," the American Association of State Highway and Transportation Officials, hereinafter referred to as "AASHTO," and the National Academy of Sciences, hereinafter referred to as the "Academy"; the State formally consents to providing the funds stated in this agreement as its contribution towards financing expenditures incurred in conducting the NCHRP in accordance with the Memorandum Agreement.

In accordance with the action taken by AASHTO requesting the Academy, through its Transportation Research Board to administer the NCHRP, the State authorizes FHWA to charge the State's pro rata share of the costs incurred against the funds stated in this agreement.

It is understood that FHWA will make payments to the Academy for the State's share of the cost of the program pursuant to the State-Academy Agreement for the current fiscal year and the Fiscal Agreement entered into between the FHWA on July 1, 1962.

In the event the State's contribution towards the cost of the NCHRP is to be financed with both Federal-aid funds and State-matching funds, the State agrees to advance the FHWA the State-matching funds for its share of the estimated cost.

SECTION II—FUNDS

3. ESTIMATED TOTAL COST OF PROJECT	4. FEDERAL FUNDS	5. EFFECTIVE DATE OF AUTHORIZATION

SECTION III—AGREEMENT AND SIGNATURES

The State, through its Highway Agency, and the Federal Highway Administration agree to the above provisions.

_____ (Official Name of the Highway Agency)	U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION
BY_____	BY_____
_____ (Title)	_____ (Title)
BY_____	_____ Date Executed
_____ (Title)	
BY_____	
_____ (Title)	

Form PR 2.1 (Rev. 9-74) Previous editions are obsolete

[49 FR 33009, Aug. 20, 1984]

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Subpart D—Geodetic Markers

SOURCE: 39 FR 26414, July 19, 1974, unless otherwise noted.

§ 630.401 Purpose.

The purpose of this subpart is to prescribe procedures for conducting geodetic control surveys when participation with Federal-aid highway funds in the cost thereof is proposed and to encourage inter-agency cooperation in setting station markers, surveying to measure their position, and preserving the control so established.

§ 630.402 Policy.

(a) Geodetic surveys along Federal-aid highway routes may be programmed as Federal-aid highway projects.

(b) All geodetic survey work performed as a Federal-aid highway project will conform to National Ocean Survey (NOS) specifications. NOS will, as the representative of FHWA, be responsible for the inspection and verification of the work to ascertain that the specifications for the work have been met. Final project acceptance by FHWA will be predicated on a finding of acceptability by NOS.

§ 630.403 Initiation of projects.

All projects shall be coordinated by the FHWA Division Administrator, the State highway department and the National Ocean Survey.

§ 630.404 Standards.

(a) Highway purposes may best be served by the establishment of station markings for horizontal control along Federal-aid highway routes at spacings of three to eight kilometers (about 2 to 5 miles) and station markers for vertical control of spacings no closer than one kilometer. These requirements may be waived only with the approval of the Administrator.

(b) Projects should be of sufficient scope to permit efficient use of field parties. Projects should extend at least 30 kilometers. Projects may be coordinated with adjoining States to attain greater efficiency.

(c) Where geodetic station markers cannot be established inititally at points readily accessible from the Federal-aid route, or where unavoidable circumstances result in their being established within construction limits, supplemental projects may later be approved to set and survey markers at satisfactory permanent points, preferably within the right-of-way but at points where their use does not introduce traffic hazards.

Subparts E—F [Reserved]

Subpart G—Advance Construction of Federal-Aid Projects

SOURCE: 55 FR 11903, Mar. 30, 1990, unless otherwise noted.

§ 630.701 Purpose.

The purpose of this subpart is to prescribe procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the State.

§ 630.703 Eligibility.

(a) The State highway agency (SHA) may proceed with a highway substitute, secondary, urban, metropolitan planning, railway-highway crossings, bridge replacement and rehabilitation, hazard elimination, or planning and research project in accordance with this subpart, provided the SHA:

(1) Has obligated all funds apportioned or allocated to it under 23 U.S.C. 103(e)(4)(H), 104(b)(2), 104(b)(6), 104(f), 130, 144, 152, or 307, as the case may be for the proposed project, or

(2) Has used all obligation authority distributed to it, or

(3) Demonstrates that it will use all obligation authority distributed to it.

(b) The SHA may proceed with a primary, Interstate, or Interstate resurfacing, restoration, rehabilitation, and reconstruction (4R) project authorized under 23 U.S.C. 104(b)(1) and 104(b)(5) in accordance with this subpart without regard to apportionment or obligation authority balances.

(c) Total advance construction authorization within a funding category shall not exceed the limitation established in § 630.707.

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§ 630.705 Procedures.

(a) An advance construction project shall meet the same requirements and be processed in the same manner as a regular Federal-aid project, except,

(1) FHWA authorization does not constitute any commitment of Federal funds on the project, and

(2) FHWA shall not reimburse the State until the project is converted under § 630.709.

(b) Project numbers shall be identified by the letters "AC" preceding the regular project number prefix.

(c) If the SHA plans to claim bond interest costs under § 630.711, it shall include in its request for authorization the estimated federally participating bond interest cost.

(d) The SHA shall submit a final voucher to the FHWA upon completion of the project even though the project has not been converted. If the SHA is claiming bond interest costs under § 630.711, it shall certify on the final voucher that the bond proceeds were expended in the construction of the project and shall include a computation of the eligible interest costs.

§ 630.707 Limitation.

(a) Through September 30, 1990, the Federal share of the cost of advance construction projects within each funding category is limited to:

(1) The amount of unobligated funds apportioned or allocated to the State, plus,

(2) The State's expected apportionment of the existing authorizations, plus,

(3) An additional amount equal to the State's expected apportionment from the last year of authorization. This additional amount is not applicable to Interstate projects authorized under 23 U.S.C. 104(b)(5)(A).

(b) Beginning October 1, 1990, the limitation will be restricted to the amount specified in paragraph (a)(1) plus paragraph (a)(2) of this section.

§ 630.709 Conversion to a regular Federal-aid project.

(a) The SHA may submit a written request to the FHWA that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available.

(b) The FHWA's approval of the SHA's request shall result in the immediate obligation of the full Federal share of project costs.

(c) The SHA may then claim reimbursement for the Federal share of project costs incurred provided the project agreement has been executed. If the SHA has previously submitted a final voucher, the FHWA will process the voucher for payment.

§ 630.711 Payment of bond interest.

(a) For Interstate projects authorized by the FHWA after January 6, 1983, and for Interstate 4R and primary projects authorized by the FHWA after April 2, 1987, interest earned and payable on bonds issued by a State is an eligible cost of construction as follows:

(1) Participating interest cost is based on the actual expenditure of bond proceeds on the Federal-aid project. The interest on the bonds is applied to the amount of bond proceeds expended on the project from the date of expenditure.

(2) The amount of interest determined in paragraph (a)(1) of this section shall not exceed the estimated increase in the physical construction cost of the project which would have occurred had the project been authorized on the date of conversion. The estimated increase in the physical construction cost is determined by applying the increase, if any, in the national construction cost index in effect on the date of conversion over the index in effect on the date of the FHWA authorization, to the actual cost of physical construction.

(b) For Interstate projects under physical construction on January 1, 1983, and converted to a regular Federal-aid project after January 1, 1983, bond interest is eligible in accordance with paragraph (a)(1) of this section. The restriction in paragraph (a)(2) of this section does not apply.

Subpart H—Bridges on Federal Dams

SOURCE: 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

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§ 630.801 Purpose.

The purpose of this subpart is to prescribe procedures for the construction and financing, by an agency of the Federal Government, of public highway bridges over dams constructed and owned by or for the United States.

§ 630.802 Applicability.

A proposed bridge over a dam, together with the approach roads to connect the bridge with existing public highways, must be eligible for inclusion in the Federal-aid highway system, if not already a part thereof.

§ 630.803 Procedures.

A State's application to qualify a project under this subpart will include:

(a) A certification that the bridge is economically desirable and needed as a link in the Federal-aid highway system.

(b) A statement showing the source and availability of funds to be used in construction of the roadway approaches.

(c) A statement of any obligation on the part of the agency constructing the dam to provide such bridge or approach roads to satisfy a legal liability incurred independently of this subpart.

Subpart I—[Reserved]

Subpart J—Traffic Safety in Highway and Street Work Zones

AUTHORITY: 23 U.S.C. 109(b), 109(d), 315, and 402(a); 23 CFR 1.48(b), unless otherwise noted.

SOURCE: 43 FR 47140, Oct. 12, 1978, unless otherwise noted.

§ 630.1002 Purpose.

The purpose of this subpart is to provide guidance and establish procedures to assure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid construction projects.

§ 630.1004 Background.

Part VI of the manual on uniform traffic control devices (MUTCD)[1] sets forth basic priniciples and prescribes standards for the design, application, installation, and maintenance of the various types of traffic control devices for highway and street construction, maintenance operation, and utility work. The manual cannot address in depth the variety of situations that occur in providing traffic control in work zones. Although agencies responsible for traffic control and work area protection have attempted to develop some guidelines, a coordinated and comprehensive effort to develop greater uniformity is desirable. National reviews have shown that more attention is needed to insure that the MUTCD is properly implemented on all highway projects.

[43 FR 47140, Oct. 12, 1978, as amended at 51 FR 16834, May 7, 1986]

§ 630.1006 Policy.

It is the policy of the Federal Highway Administration that each highway agency shall develop and implement procedures consonant with the requirements of this regulation that will assure the safety of motorists, pedestrians, and construction workers on Federal-aid highway construction projects. The procedures shall be consistent with the provisions of the MUTCD. Highway agencies should be encouraged to implement these procedures for non-Federal-aid projects and maintenance operations as well.

§ 630.1008 Implementation.

The FHWA Division Administrator shall review and approve the highway agency's implementation of its procedures at appropriate intervals. The FHWA shall take appropriate action to assure that the highway agency's procedures are being followed and achieve the results intended. Major revisions in established procedures shall

[1] The MUTCD is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. It is incorporated by reference at 23 CFR 655, subpart F.

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be submitted to the FHWA Division Administrator for information.

§ 630.1010 Contents of the agency procedures.

The agency's procedures shall include, but not necessarily be limited to the following:

(a) *Traffic control plan (TCP).* (1) A traffic control plan is a plan for handling traffic through a specific highway or street work zone or project. These plans may range in scope from a very detailed TCP designed solely for a specific project, to a reference to standard plans, a section of the MUTCD, or a standard highway agency manual. The degree of detail in the TCP will depend on the project complexity and traffic interference with construction activity.

(2) Traffic control plans shall be developed for all projects and be included in plans, specifications, and estimates (P.S. & E.'s) and shall be consistent with part VI of the MUTCD.

(3) The scope of the TCP should be determined during planning and design phases of a project.

(4) Provisions may be made to permit contractors to develop their own TCP's and use them if the highway agency and FHWA find that these plans are as good as or better than those provided in the P.S. & E.

(5)(i) Two-lane, two-way operation on one roadway of a normally divided highway (TLTWO) shall be used only after careful consideration of other available methods of traffic control. Where the TLTWO is used, the TCP shall include provisions for the separation of opposing traffic except:

(A) Where the TLTWO is located on an urban type street or arterial where operating speeds are low;

(B) Where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway; or

(C) Where FHWA approves nonuse of separation devices based on unusual circumstances.

(ii) Center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for separation purposes.

(b) *Responsible person.* The highway agency shall designate a qualified person at the project level who will have the primary responsibility and sufficient authority for assuring that the TCP and other safety aspects of the contract are effectively administered. While the project or resident engineer may have this responsibility, on large complex projects another person should be assigned at the project level to handle traffic control on a full-time basis.

(c) *Pay items.* The P.S. & E. should include unit pay items for providing, installing, moving, replacing, maintaining, and cleaning traffic control devices required by the TCP. Suitable force account procedures may be utilized for traffic control items. Lump-sum method of payment should be used only to cover very small projects, projects of short duration, contingency, and general items. Payment for traffic control items as incidental to other items of work should be discouraged.

(d) *Training.* All persons responsible for the development, design, implementation, and inspection of traffic control shall be adequately trained.

(e) *Process review and evaluation.* (1) A review team consisting of appropriate highway agency personnel shall annually review randomly selected projects throughout its jurisdiction for the purpose of assessing the effectiveness of its procedures. The agency may elect to include an FHWA representative as a member of the team. The results of this review are to be forwarded to the FHWA Division Administrator for his review and approval of the highway agency's annual traffic safety effort.

(2) Construction zone accidents and accident data shall be analyzed and used to continually correct deficiencies which are found to exist on individual projects, and to improve the content of future traffic control plans.

[43 FR 47140, Oct. 12, 1978, as amended at 47 FR 21780, May 20, 1982]

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PART 633—REQUIRED CONTRACT PROVISIONS

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.
633.101 Purpose.
633.102 Applicability.
633.103 Regulatory authority.
633.104 Availability.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

633.201 Purpose.
633.202 Definitions.
633.203 Applicability of existing laws, regulations, and directives.
633.204 Fiscal allocation and obligations.
633.205 Prefinancing.
633.206 Project agreements.
633.207 Construction labor and materials.
633.208 Maintenance.
633.209 Notices to prospective Federal-aid construction contractors.
633.210 Termination of contract.
633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

Appendices to Subpart B

Appendix A—Types of Contracts to Which the Civil Rights Act of 1964 is Applicable
Appendix B—Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts
Appendix C—Additional Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Contracts Other Than Construction Contracts
Appendix D—Federal-Aid Proposal Notices

Subpart C—Direct Federal Construction Contracts

633.301 Purpose.
633.302 Applicability.

Appendix A to Subpart C—Continuation of Standard Form 19-A Labor Standards Provisions

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Authority: 23 U.S.C. 114 and 315; 49 CFR 1.48.

Source: 52 FR 36920, Oct. 2, 1987, unless otherwise noted.

§ 633.101 Purpose.

To prescribe for Federal-aid highway proposals and construction contracts the method for inclusion of required contract provisions of existing regulations which cover employment, nonsegregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of a contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time-to-time be required by law and regulation as conditions of Federal assistance.

§ 633.102 Applicability.

(a) The required contract provisions and the required proposal notices apply to all Federal-aid construction contracts other than Appalachian construction contracts.

(b) Form FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," contains required contract provisions and required proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions of Form FHWA-1273 shall be physically incorporated in each Federal-aid highway construction contract other than Appalachian construction contracts (see § 633.104 for availability of form).

(c) For contracts authorized under certification acceptance procedures, an alternate format for inclusion of required contract provisions may be used pursuant to 23 CFR part 640.

(d) The required contract provisions contained in Form FHWA-1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.

(e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The re-

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quired contract provisions of Form FHWA-1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA-1273.

(f) The State highway agency (SHA) shall include the notices concerning certification of nonsegregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act, pursuant to 40 CFR part 15, in all bidding proposals for Federal-aid highway construction projects. As the notices are reproduced in Form FHWA-1273, the SHA may include Form FHWA-1273 in its entirety to meet this requirement.

§ 633.103 Regulatory authority.

All required contract provisions contained in Form FHWA-1273 are requirements of regulations promulgated by the FHWA or other Federal agencies.The authority for each provision will be cited in the text of Form FHWA-1273.

§ 633.104 Availability.

(a) Form FHWA-1273 will be maintained by the FHWA and as regulatory revisions occur, the form will be updated.

(b) Current copies of Form FHWA-1273, Required Contract Provisions, will be made available to the SHAs by the FHWA.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

AUTHORITY: 40 U.S.C. App. 201, 402; 23 U.S.C. 315; 49 CFR 1.48(b)(35).

SOURCE: 39 FR 35146, Sept. 30, 1974, unless otherwise noted.

§ 633.201 Purpose.

The purpose of the regulations in this subpart is to establish policies and outline procedures for administering projects and funds for the Appalachian Development Highway System and Appalachian local access roads.

§ 633.202 Definitions.

(a) The word *Commission* means the Appalachian Regional Commission (ARC) established by the Appalachian Regional Development Act of 1965, as amended (Act).

(b) The term *division administrator*" means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

§ 633.203 Applicability of existing laws, regulations, and directives.

The provisions of title 23 U.S.C., that are applicable to the construction and maintenance of Federal-aid primary and secondary highways, and which the Secretary of Transportation determines are not inconsistent with the Act, shall apply, respectively, to the development highway system and the local access roads. In addition, the Regulations for the Administration of Federal-aid for Highways (title 23, Code of Federal Regulations) and directives implementing applicable provisions of title 23 U.S.C., where not inconsistent with the Act, shall be applicable to such projects.

§ 633.204 Fiscal allocation and obligations.

(a) Federal assistance to any project under the Act shall be as determined by the Commission, but in no event shall such Federal assistance exceed 70 per centum of the cost of such a project.

(b) The division administrator's authorization to proceed with the proposed work shall establish obligation of Federal funds with regard to a particular project.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

§ 633.205 Prefinancing.

(a) Under the provisions of subsection 201(h) of the Act, projects located on the Appalachian Development Highway System including preliminary engineering, right-of-way, and/or construction may be programed and advanced with interim State financing.

(b) Program approvals, plans, specifications, and estimates (PS&E) ap-

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proval, authorizations to proceed, concurrence in award of contracts, and all other notifications to the State of advancement of a project shall include the statement, "There is no commitment or obligation on the part of the United States to provide funds for this highway improvement. However, this project is eligible for Federal reimbursement when sufficient funds are available from the amounts allocated by the Appalachian Regional Commission."

§ 633.206 Project agreements.

(a) Project agreements executed for projects under the Appalachian program shall contain the following paragraphs:

(1) "For projects constructed under section 201 of the Appalachian Regional Development Act of 1965, as amended, the State highway department agrees to comply with all applicable provisions of said Act, regulations issued thereunder, and policies and procedures promulgated by the Appalachian Regional Commission, and the Federal Highway Administration. Inasmuch as a primary objective of the Appalachian Regional Development Act of 1965 is to provide employment, the State highway department further agrees that in addition to the other applicable provisions of title 49, Code of Federal Regulations, part 21, § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of appendix C thereof, shall be applicable to all employment practices in connection with this project, and to the State's employment practices with respect to those employees connected with the Appalachian Highway Program."

(2) "For projects constructed on a section of an Appalachian development route not already on the Federal-aid Primary System, the State highway department agrees to add the section to the Federal-aid Primary System prior to, or upon completion of, construction accomplished with Appalachian funds."

(b) For prefinanced projects, the following additional provision shall be incorporated into the project agreement: "Project for Construction on the Appalachian Development Highway System in Advance of the Appropriation of Funds. This project, to be constructed pursuant to subsection 201(h) of the Appalachian Regional Development Act Amendments of 1967, will be constructed in accordance with all procedures and requirements and standards applicable to projects on the Appalachian Development Highway System financed with the aid of Appalachian funds. No obligation of Appalachian funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway department, and approval thereof by the Federal Highway Administration, any Appalachian development highway funds made available to the State by the Appalachian Regional Commission subsequent to the date of this agreement may be used to reimburse the State for the Federal share of the cost of work done on the project."

§ 633.207 Construction labor and materials.

(a) Construction and materials shall be in accordance with the State highway department standard construction specifications approved for use on Federal-aid primary projects and special provisions and supplemental specifications amendatory thereto approved for use on the specific projects.

(b) The provisions of 23 U.S.C. 324 and of title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d-2000d-4) and the implementing regulations in 49 CFR part 21, including the provisions of § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of appendix C thereof relative to employment practices, shall be applicable to all types of contracts listed in appendix A.

(c) The "Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts," Form PR-1316 (appendix B), shall be included in all construction contracts awarded under the Act.

(d) The required contract provisions set forth in Form PR-1317 (appendix C) shall be included in all types of contracts described in appendix A, other than construction contracts.

(e) In the design and construction of highways and roads under the Act, the

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State may give special preference to the use of mineral resource materials native to the Appalachian region. The provisions of § 635.409 of this chapter shall not apply to projects under the Act to the extent such provisions are inconsistent with sections 201(d) and (e) of the Act.

[39 FR 35146, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 36204, Aug. 27, 1976]

§ 633.208 Maintenance.

Maintenance of all highway projects constructed under the Act, whether on the development system or local access roads, shall be the responsibility of the State. The State may arrange for maintenance of such roads or portions thereof, by agreement with a local governmental unit.

§ 633.209 Notices to prospective Federal-aid construction contractors.

The State highway department shall include the notices set forth in appendix D in all future bidding proposals for Appalachian Development System and Appalachian local access roads construction contracts.

§ 633.210 Termination of contract.

All contracts exceeding $2,500 shall contain suitable provisions for termination by the State, including the manner in which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

§ 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

Pursuant to regulations of the Environmental Protection Agency (40 CFR part 15) implementing requirements with respect to the Clean Air Act and the Federal Water Pollution Control Act are included in appendix B to this part.

[40 FR 49084, Oct. 21, 1975]

Appendices to Subpart B

Appendix A—Types of Contracts to Which the Civil Rights Act of 1964 is Applicable

Section 324 of title 23 U.S.C., the Civil Rights Act of 1964, and the implementing regulations of the Department of Transportation (49 CFR part 21), including the provisions of paragraphs (2)(iii) and (2)(v) of appendix C thereof relative to employment practices, are applicable to the following types of contracts awarded by State highway departments, contractors, and first tier subcontractors, including those who supply materials and lease equipment:

1. Construction.
2. Planning.
3. Research.
4. Highway Safety.
5. Engineering.
6. Property Management.
7. Fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way including, but not limited to:

a. Advertising contracts.
b. Agreements for economic studies.
c. Contracts for surveys and plats.
d. Contracts for abstracts of title certificates and title insurance.
e. Contracts for appraisal services and expert witness fees.
f. Contracts to negotiate for the acquisition of right-of-way.
g. Contracts for disposal of improvements and property management services.
h. Contracts for employment of fee attorneys for right-of-way procurement, or preparation and trial of condemnation cases.
i. Contracts for escrow and closing services.

[40 FR 49084, Oct. 21, 1975]

Appendix B—Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts

I. Application.
II. Employment Preference.
III. Equal Opportunity: Employment Practices.
IV. Equal Opportunity: Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment.
V. Nonsegregated Facilities.
VI. Payment of Predetermined Minimum Wages.
VII. Statements and Payrolls.
VIII. Record of Materials, Supplies and Labor.
IX. Subletting or Assigning the Contract.
X. Safety: Accident Prevention.

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XI. False Statements Concerning Highway Projects.
XII. Implementation of Clean Air Act and Federal Water Pollution Control Act.

I. *Application.*

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided in sections II, III, and IV hereof, the contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b):

Section 1, paragraph 2.
Section VI, paragraphs 1, 2, 3, 5 and 8a.
Section VII, paragraphs 1, 5a, 5b and 5d.

II. *Employment preference.*

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the United States Department of Labor wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of laborers, mechanics and other employees he anticipates will be required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill the positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of section II-1 through II-4 in every subcontract for work which is, or reasonably may be, done as on-site work.

III. *Equal opportunity: employment practices.*

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to em-

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ployees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under this section III and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this section III in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

IV. *Equal opportunity selection of subcontractors, procurement of materials, and leasing of equipment.*

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the *contractor*), *agrees as follows:*

1. *Compliance with regulations.* The contractor shall comply with the provisions of 23 U.S.C. 324 and with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") title 49, Code of Federal Regulations, part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. *Nondiscrimination.* The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices.

3. *Solicitations for subcontracts including procurement of materials and equipment.* In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier, shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. *Information and reports.* The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or

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the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Sanctions for noncompliance.* In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract, in whole or in part.

6. *Incorporation of provisions.* The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement, as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier, as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

V. *Nonsegregated facilities.*

(Applicable to Federal-aid construction contracts and related subcontracts exceeding $10,000 which are not exempt from the Equal Opportunity clause.)

By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term *segregated facilities* means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certifications from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

VI. *Payment of predetermined minimum wages.*

1. *General.* All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of section VI, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. *Classifications*—a. The State highway department contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by

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the State highway department contracting officer to the Secretary of Labor.

b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. *Payment of fringe benefits*—a. The State highway department contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefits, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wage of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: *Provided, however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. *Payment of excess wages.* While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. *Apprentices and trainees (Programs of Department of Labor).* a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

b. Trainees, except as provided in 29 CFR 5.15, will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway department or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity require-

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ments of Executive Order 11246, as amended, and 29 CFR part 30.

6. *Apprentices and trainees (Programs of Department of Transportation).* Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of section VI, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. *Withholding for unpaid wages.* The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site of the work, all or part of the wages required by the contract, the State highway department contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

8. *Overtime requirements.* a. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen or guards (including apprentices and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

b. In the event of any violation of paragraph 8a, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph 8a, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph 8a.

c. The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in paragraph 8b.

VII. *Statements and payrolls.*

1. *Compliance with Copeland Regulations (29 CFR part 3).* The contractor shall comply with the Copeland Regulations (29 CFR part 3) of the Secretary of Labor which are herein incorporated by reference.

2. *Weekly statement.* Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, including apprentices and trainees described in section VI, paragraphs 5 and 6, and watchmen and guards on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.

3. *Final labor summary.* The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating for the completed project the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in section VIII, hereof, relative to materials and supplies.

4. *Final certificate.* Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

* * * * *

The undersigned, contractor on

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(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title _____

* * * * *

5. *Payrolls and payroll records*—a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen and guards working at the site of the work.

b. The payroll records shall contain the name, social security number and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to section VI, paragraph 3.b., has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

c. The payrolls shall contain the following information:

1. The employee's full name, address and social security number and a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in section II, paragraph 1.a. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

2. The employee's classification.

3. Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefits funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

4. The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

5. The itemized deductions made and

6. The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by section VII, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CFR part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to section VI, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary arrangements for them to be cashed and shall given information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

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h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VIII. *Record of materials, supplies and labor.*

1. The contractor shall maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in section VII, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

2. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR-47 with attendant explanations.

3. Where subcontracts are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

IX. *Subletting or assigning the contract.*

1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as *Specialty Items* may be performed by subcontract and the amount of any such *Specialty Items* so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. *His own organization* shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators.

b. *Specialty items* shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirements set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision, management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any items that have been selected as *Specialty Items* for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

X. *Safety: Accident prevention.*

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, reasonably necessary to protect the life and health

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of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (title 29, Code of Federal Regulations, part 1926, formerly part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

XI. *False statements concerning highway projects.*

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly and honestly as possible. Willfull falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to all personnel concerned with the project:

* * * * *

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

Title 18 U.S.C., section 1020, reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

"Whoever knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

"Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

"Shall be fined not more than $10,000 or imprisoned not more than five years, or both."

XII. *Implementation of Clean Air Act and Federal Water Pollution Control Act (applicable to contracts and subcontracts which exceed $100,000).*

1. The contractor stipulates that any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR part 15), is listed not on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR part 15.20.

2. The contractor agrees to comply with all the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph XII in every subcontract which exceeds $100,000, and further agrees to take such action as Government may direct as a means of enforcing such requirements.

[40 FR 49084, Oct. 21, 1975]

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APPENDIX C—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

EQUAL OPPORTUNITY: EMPLOYMENT PRACTICES AND SELECTION OF SUBCONTRACTORS, SUPPLIERS OF MATERIALS, AND LESSORS OF EQUIPMENT

During the performance of this contract, the contractor agrees as follows:

1. *Compliance with regulations.*

The contractor will comply with the provisions of 23 U.S.C. 324 and with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.

2. *Employment practices*

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to the following: recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities and treatment of employees. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this employment practices clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers representative of the contractor's commitments under the employment practices provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. *Selection of subcontractors, procurement of materials and leasing of equipment.*

a. The contractor, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

b. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. *Information and reports.*

The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Incorporation of provisions.*

The contractor will include these additional required contract provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however,* That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may

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request the United States to enter into such litigation to protect the interest of the United States.

6. *Sanctions for noncompliance.*

In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract in whole or in part.

[40 FR 49088, Oct. 21, 1975]

Appendix D—Federal-aid Proposal Notices

Notices to Prospective Federal-Aid Construction Contractors

I. *Certification of nonsegregated facilities.*

(a) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed $10,000 and are not exempt from the provisions of the Equal Opportunity clause.

Notice To Prospective Subcontractors and Material Suppliers of Requirement for Certification of Nonsegregated Facilities

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds $10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed $10,000 and are not exempt from the provisions of the Equal Opportunity clause.

II. *Implementation of Clean Air Act.*

(a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CFR part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under

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consideration to be listed on the EPA List of Violating Facilities.

Subpart C—Direct Federal Construction Contracts

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b)(35).

SOURCE: 39 FR 22418, June 24, 1974, unless otherwise noted.

§ 633.301 Purpose.

To prescribe for direct Federal highway construction contracts, provisions covering employment, safety, specific equal employment opportunity responsibilities and false statements concerning highway projects.

§ 633.302 Applicability.

(a) The form "Continuation of Standard Form 19-A, Labor Standards Provisions" (appendix A) shall be made a part of all highway construction contracts under the direct supervision of the Federal Highway Administration. The form shall be incorporated in each highway construction contract as a continuation of Standard Form 19-A, Labor Standards Provisions and the clauses set forth in paragraph 7 of appendix A shall be included in all subcontracts.

(b) Such additional labor standards provisions as hometown or imposed equal employment opportunity plans shall be added at the end of the form.

APPENDIX A TO SUBPART C—CONTINUATION OF STANDARD FORM 19-A LABOR STANDARDS PROVISIONS (DOT-FHWA 3-74)

1. *Weekly Statement*

The contractor and each subcontractor shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by the Copeland Act Regulations, 29 CFR part 3, and by 29 CFR part 5, during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. The statement shall be on U.S. Department of Labor Form WH 348, "Statement of Compliance," or on an identical form on the back of U.S. Department of Labor Form WH 347, "Payroll (For Contractor's Optional Use)," or on any form with identical wording. Copies of these forms may be purchased from the Government Printing Office.

2. *Employment Practices*

a. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor and each subcontractor shall make all necessary arrangements for them to be cashed and shall give information to their employees regarding such arrangements.

b. No fee of any kind shall be asked or accepted by the contractor, or any of his agents or subcontractors, from any person as a condition of employment on the project.

c. No laborers or mechanics shall be charged for any tools used in performing their duties unless prior permission to make payroll deductions for such charges has been granted by the Secretary of Labor in accordance with Section 3.6 of the Copeland Act Regulations.

d. Every employee on the work covered by this contract shall be permitted to lodge, board, and trade where and with whom he elects and neither the contractor, his subcontractors, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

e. No charge shall be made for any transportation furnished by the contractor, or his subcontractors to any person employed on the work.

f. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

g. Each employee's social security number must be shown on the first payroll on which his name appears.

3. *Payment of Excess Wages*

While the wage rates shown in the wage determination decision are the minimum hourly rates required by the contract to be paid during its life, it is the responsibility of bidders to inform themselves as to the local labor conditions, such as the length of workday and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustment of wage rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

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4. *Safety*

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any individual employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, part 1926, as revised from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act.

5. *False Statements Concerning Highway Projects*

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the contractor shall post the Notice, Form PR-1022 on each Federal highway project in one or more places where it is readily available to all personnel concerned with the project.

6. *Specific Equal Employment Opportunity Responsibilities*

a. *General.* (1) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in SF 23-A, General Provisions and in these Provisions. The requirements set forth in these Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the General Provisions.

(2) The contractor will work with the Federal Government in carrying out equal employment opportunity obligations and in their review of his activities under the contract.

(3) The prime contractor, and all subcontractors (not including material suppliers), holding subcontracts of $10,000 or more, will comply with the minimum equal employment opportunity requirements set forth in the balance of this clause 6.

b. *Equal Employment Opportunity Policy* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

c. *Equal Employment Opportunity Officer.*

The contractor will designate and make known to the contracting officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

d. *Dissemination of Policy.*

(1) All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(a) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within

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thirty days following their reporting for duty with the contractor.

(c) The EEO Officer or appropriate company official will instruct all employees engaged in the direct recruitment of employees for the project relative to the methods followed by the contractor in locating and hiring minority group employees.

(2) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officer, etc., the contractor will take the following actions:

(a) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(b) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

e. *Recruitment.*

(1) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." He will insert all such advertisements in newspapers, or other publications, having a large circulation among minority groups in the area from which the project work force would normally be derived.

(2) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

(3) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

f. *Personnel Actions.*

(1) Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

(a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

(c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The contractor will investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation the contractor will inform every complainant of all of his avenues of appeal.

g. *Training and Promotion.*

(1) The contractor will assist in locating, qualifying and increasing the skills of minority group employees and applicants, for employment.

(2) Consistent with his manpower requirements and as permissible under Federal and State regulations, the contractor will make full use of training programs, i.e., preapprenticeship apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.

(3) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

(4) The contractor will periodically review the training and promotion potential of minority group employees and will encourage eligible employees to apply for such training and promotion.

h. *Unions.*

If the contractor relies in whole or in part upon unions as a source of his work force, he will use his best efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the contractor, either directly or through a contrac-

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tor's association acting as his agent, will include the procedures set forth below:

(1) Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

(2) Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

(3) In the event a union is unable to refer applicants as requested by the contractor within the time limit set forth in the union agreement, the contractor will, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified minority group persons.

i. *Subcontracting.*

(1) The contractor will use his best efforts to utilize minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) The contractor will use his best efforts to assure subcontractor compliance with their equal employment opportunity obligations.

j. *Records and Reports.*

(1) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(a) The number of minority and nonminority group members employed in each work classification on the project.

(b) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to contractors who rely in whole or in part on unions, as a source of their work force).

(c) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees.

(d) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by the contracting officer or his authorized representative.

(3) The contractor will submit to the Federal Highway Administration a monthly report for the first three months after construction begins, and thereafter upon request, for the duration of the project, indicating the number of minority and nonminority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391.

7. *Subcontracts.*

The contractor shall include, verbatim, clauses 1, 2, 4, 5 and 6 of this continuation sheet in each of his subcontracts, except that Clause 6 will not be required for subcontracts less than $10,000. In addition, the contractor shall include a clause requiring each subcontractor to include these clauses in any lower tier subcontracts.

PART 635—CONSTRUCTION AND MAINTENANCE

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AUTHORITY: 23 U.S.C. 112-114, 117, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

Subpart A—Contract Procedures

SOURCE: 39 FR 35152, Sept. 30, 1974, unless otherwise noted.

§ 635.101 Purpose.

The purpose of this subpart is to prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

§ 635.102 Definitions.

As used in this subpart:

(a) *Administrator* means Federal Highway Administrator.

(b) *Division Administrator* means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

(c) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency* if the context so implies.

(d) *Certification Acceptance* means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

(e) *Minority Contractor* means a minority business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include but are not limited to Negroes, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, Orientals, and Aleuts.

§ 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart, subject to certain modifications as provided in § 635.105(e), apply to all Federal-aid highway projects except those constructed under a Certification Acceptance Plan to which only §§ 635.107(e) and 635.108(c) shall apply.

[52 FR 45172, Nov. 25, 1987]

§ 635.104 Method of construction.

(a) Unless, as provided in paragraph (b) of this section, the State highway agency demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists, actual construction work shall be performed by contract awarded to the lowest responsible bidder. The State highway agency shall assure opportunity for free, open and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply

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with the procedures and requirements set forth in § 635.107.

(b) When the Division Administrator finds that it is cost effective or that an emergency exists, construction work may be performed by some method other than by contract awarded by competitive bidding pursuant to requirements and procedures prescribed by him/her. Before such finding is made, the State highway agency shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and economically. Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter.

[39 FR 35152, Sept. 30, 1974, as amended at 40 FR 14906, Apr. 3, 1975; 42 FR 30835, June 17, 1977; 48 FR 22912, May 23, 1983; 52 FR 45172, Nov. 25, 1987]

§ 635.105 Supervising agency.

(a) The State highway agency has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by or under the supervision of a county, city, or other local public agency. The State highway agency will be responsible for insuring that such projects receive the same degree of supervision and inspection as a project constructed under a contract let and directly supervised by that agency and that the project is completed in conformity with approved plans and specifications.

(b) When a project is not located on a highway system over which the State highway agency has legal jurisdiction, or when other special conditions warrant, the State highway agency may arrange for a local public agency having jurisdiction over such streets or highways to perform the work with its own forces, or to let a contract therefor, provided the division administrator approves such proposed arrangements in advance and provided all the following conditions are met:

(1) There is an agreement between the State highway agency and the local public agency setting forth the conditions under which the project will be constructed. The agreement shall provide that construction work performed by or under the supervision of a local public agency will be subject to inspection at all times by the State highway agency and the FHWA.

(2) The State highway agency certifies that the work performed by the local public agency is cost effective.

(3) The local public agency is paying part of the cost of the work or has other special interest therein.

(4) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work.

(5) In the case of force account work, there is full compliance with subpart B of this part.

(c) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(d) Although the State highway agency may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the State highway agency shall provide a full-time State-employed engineer to be in responsible charge and direct control of the project at all times. In those instances where a city or county can justify the use of consultants for these services, the city or county shall have a similar duty. The State highway agency and any such city or county shall not be relieved of its responsibilities under Federal law and the regulations in the event it utilizes the services of an engineering organization.

(e) When construction operations are performed on Federal-aid highway projects by any Federal agency by Federal contract and under such agency's procedures and operations on behalf of a State highway agency or other public agency, such construction operations shall be performed under the direct supervision of the State highway agency except that such supervision may be exercised through the contracting Federal agency where it is so provided by agreement between the State highway agency and the Federal agency. The right of inspection of the work under these contracts

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shall be extended to all agencies involved in the project.

[39 FR 35152, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983]

§ 635.106 Small business participation.

The State highway agency shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with title VI of the Civil Rights Act of 1964 and Executive Order 11625, the State highway agency shall affirmatively encourage minority business participation in the highway construction program.

§ 635.107 Advertising for bids.

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization thereof by the division administrator.

(b) An invitation for bids shall not be issued by the State highway agency until the provisions of the applicable FHWA regulations and directives covering the administration of the Highway Relocation Assistance Program have been met, and there exists an understanding that satisfactory traffic control devices will be installed prior to acceptance of the project. The advertising shall be done in accordance with the laws, specifications, regulations, and policies of the State in which the project is located and the applicable Federal requirements set forth in this subpart and those implementing title VI of the Civil Rights Act of 1964, under conditions that will assure free and adequate competition.

(c) The advertisement must be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the division administrator in special cases when justified.

(d) The State highway agency shall obtain the approval of the division administrator prior to issuing any addendums to the approved plans and specifications during the advertising period. The State highway agency shall provide such assurance as may be required by the division administrator that all bidders have received any such addendums.

(e) Bidding procedures on a nondiscriminatory basis shall be afforded to all qualified bidders regardless of State boundaries and without regard to race, color, sex, or national origin. If any provisions of State laws, specifications, regulations, or policies may operate in any manner contrary to Federal requirements, including title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible contractor appropriately qualified in accordance with § 635.108, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, specifications, special provisions or other governing documents shall include a positive statement to advise prospective bidders of those provisions that are not applicable.

(f) No procedure or requirement shall be imposed by any State in connection with any project which operates to restrict competitive bidding by discriminating against the purchase of a surety bond or insurance policy from any surety or insurer outside the State and authorized to do business in the State.

(g) No public agency shall be permitted to bid in competition, or to enter into subcontracts, with private contractors.

(h) In the event that § 635.309(c)(1) and (2), have not been complied with prior to advertisement, the advertised specifications shall include:

(1) A statement that physical construction may proceed when authorization is granted, but the contractor will take no action that will result in unnecessary inconvenience, disproportionate injury or any action coercive in nature to occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way.

(2) A statement concerning any acquired or unacquired parcels of right-of-way for which the lack of right of occupancy and use can be expected to interfere with construction operations;

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(3) An estimate of the length of time such interferences can be expected to continue; and

(4) A statement that extensions of time will be granted, if necessary, for delays caused by interferences beyond such estimate period.

(i)(1) The State highway agency shall include a noncollusion provision substantially as follows in the advertised specifications:

Each bidder shall file a sworn or unsworn statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the sworn or unsworn statement as part of the bid proposal package will make the bid nonresponsive and not eligible for award consideration.

(2) The required forms for the sworn affidavit and the unsworn declaration will be provided by the State to each prospective bidder.

(3) The sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths.

(4) As an alternative, the unsworn statement shall be in the form of a declaration executed under penalty of perjury under the laws of the United States.

[39 FR 35152, Sept. 30, 1974, as amended at 40 FR 14906, Apr. 3, 1975; 40 FR 36319, Aug. 20, 1975; 49 FR 28550, July 13, 1984; 54 FR 26189, June 22, 1989]

§ 635.108 Licensing and qualification of contractors.

(a) No procedure or requirement for prequalification, qualification or licensing of contractors shall be approved which, in the judgment of the Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed. No contractor shall be required by law, regulation or practice to obtain a license before he may submit a bid or before his bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(b) The procedures and requirements a State highway agency proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the division administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the division administrator.

(c) For purposes of evaluating compliance with the requirements of title VI of the Civil Rights Act of 1964 in these areas, the State highway agency shall establish procedures and maintain records that will identify contractors and subcontractors with regard to minority or nonminority classification within 90 days after the effective date of this subsection.

§ 635.109 Bid opening and bid tabulations.

All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. The State highway agency shall

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prepare and forward tabulations of bids to the division administrator. These tabulations shall be certified by a responsible State highway agency official and shall show (a) item details for at least the low three acceptable bids and (b) the total amounts of all other acceptable bids.

§ 635.110 Tied bids.

(a) Two or more Federal-aid projects may be tied together for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.

(b) Federal-aid projects and State-financed projects may be combined in one contract where the conditions and size of the projects are so similar that the unit costs on the Federal-aid projects will not be increased by such combination of projects. In such cases, like quantities should be combined in the proposal to avoid the possibility of unbalancing of bids in favor of either of the projects in the combination.

(c) The State highway agency may tie or allow to be tied, proposals for a Federal-aid project and a State-financed project where conditions are other than as outlined in § 635.110(b). The bid schedule shall set forth the quantities separately for the Federal-aid work and the State-financed work. All proposals submitted for the tied projects must contain separate bid prices for each project individually. Federal participation in the cost of the work will be on the basis of the unit prices presented in the proposal by the individual contractor who would be the lowest responsible bidder if only the Federal-aid project were considered.

[39 FR 35152, Sept. 30, 1974, as amended at 40 FR 14906, Apr. 3, 1975]

§ 635.111 Award of contract and concurrence in award.

(a) The State highway agency shall formally request concurrence by the division administrator in the award of all Federal-aid contracts. Concurrence in award by the division administrator is a necessary prerequisite to Federal participation in the construction costs. His concurrence shall be considered as authority to proceed with construction, unless specifically stated otherwise.

(b) Contracts shall be awarded within the time established by the State highway agency to the lowest responsible bidder subject to the concurrence of the division administrator.

(c) If the State highway agency determines that the lowest bidder is not qualified, it shall so notify the division administrator and obtain his concurrence before making an award to the next lowest responsible bidder if such bid is otherwise acceptable.

(d) If the State highway agency proposes to reject or decline to read or consider an otherwise low bid on the ground that it is irregular because of noncompliance with a bidding requirement, it shall submit justification for not waiving such requirements unless the noncompliance involves one of the following items:

(1) Failure to sign the bid.

(2) Failure to furnish required amount of guarantee.

(3) Failure to include a unit price for each item in the bid schedule.

(4) Failure to include a total amount for the bid.

(5) Bid is not typed or in ink.

(6) Bid contains conditions or qualifications not provided for in the specifications.

(7) Bidder is not prequalified although approved prequalification procedures are in effect.

If such justification is not considered by the division administrator to be sufficient, concurrence will not be given to an award to another bidder on the contract at the same letting.

(e) Any proposal by the State highway agency to reject all bids received for a Federal-aid project shall be submitted to the division administrator for concurrence, accompanied by adequate justification.

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§ 635.112 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the State highway agency and submitted to the division administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimates shall include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the State highway agency for each force account project when the plans and specifications are submitted to the division administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the State highway agency and the division administrator, whether the work is to be done by the State highway agency or by a county or other political subdivision. Such agreed unit prices shall constitute a firm commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated cost for labor, materials, equipment rentals, supplies and supervision to complete the work rather than upon agreed unit prices. This subsection shall not be applicable to agreement estimates for railroad and utility force account work.

§ 635.113 Subcontracting.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(1) *Its own organization* shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

(2) *Specialty iems* shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

(b) Upon the request of an SHA, the requirements of paragraph (a) of this section may be modified in whole or in part by the FHWA to such extent as the FHWA determines to be in the public interest.

(c) The SHA shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the SHA in writing. Prior to authorizing a subcontract, the SHA shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

(d) To assure that all work is performed in accordance with the contract requirements, the contractor shall be required to furnish (1) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (2) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

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[52 FR 36921, Oct. 2, 1987]

§ 635.114 Participation in progress payments.

Federal funds will participate in the estimated costs to the State highway agency of construction accomplished as the work progresses, based on claims submitted by State highway agency. When the contract provisions provide for stockpiling, the amount of the claim upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or other designated location in the vicinity of such construction, or stockpiled by the contractor at a location not in the vicinity of such construction, if the division administrator determines that (a) because of required fabrication at an off-site location the materials cannot be stockpiled in the vicinity of the project, (b) the materials have been purchased by the contractor, and (c) the materials conform with the requirements of the plans and specifications. The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. This value may not exceed the appropriate portion of the value of the contract item or items in which such material is to be incorporated.

§ 635.119 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local unit of government for highway construction purposes may be warranted or justified. A proposal by any State highway agency for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be in the public interest to do so under the conditions peculiar to the individual project or locality.

(b) As used herein the term *publicly owned equipment* means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations. The term *rental* includes depreciation and expense of upkeep in addition to other charges.

(c) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the proposed use of such equipment is clearly set forth in the plans, specifications and estimates submitted to the division administrator for approval. In such cases the advertised specifications shall also specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged therefor, and the points of availability or delivery of the equipment, together with the express condition that the successful bidder has the option either of renting part or all of such equipment from the State or local unit of government or otherwise providing the equipment necessary for the performance of the contract work.

(d) In the rental of publicly owned equipment to contractors, the public agency should not profit at the expense of Federal funds. Accordingly, (1) rental rates shall be reasonably representative of the cost of providing such equipment, or (2) there shall be credited to the project a lump sum amount determined as the approximate profit, if profit is derived by the agency furnishing the equipment, thereby reducing the total participating cost of the project.

(e) Unforseeable causes may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local unit of government. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

(f) When publicly owned equipment is used on projects constructed on a force account basis, Federal funds may participate whether such work is performed at agreed unit prices, or on an actual cost basis. In the case of force account work to be performed by the State highway agency or local unit of government at agreed unit prices, the equipment need not be itemized nor

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rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the State highway agency shall submit to the division administrator for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

§ 635.120 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration proceeding, administrative board determination, or court judgement, or a contract claim settlement entered into in lieu of such proceedings, shall be determined on a case-by-case basis. However, Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.

(b) The FHWA shall be made aware by the SHA of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. Claims arising on projects handled under Certification Acceptance (C.A.) procedures should also be brought to the attention of the FHWA in those cases where the type of claim is unusual, controversial, or is not covered by C.A. procedures approved in the State.

(c) When requesting Federal participation, the SHA shall set forth in writing the legal and contractural basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a SHA audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the SHA shall include in its submissions a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(d) In those cases where the SHA receives an adverse decision in an amount more than can be justified by the SHA, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that, (1) the FHWA was consulted and concurred in the proposed course of action, (2) all avenues of appeal have been considered, and (3) the SHA pursued the case diligently and in a professional manner.

(e) Federal funds will not participate, (1) if it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not accepted within the standards of the profession in project design, plan prepation, contract administration or other activities which gave rise to the claim; (2) in such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and (3) in tort, inverse condemnation, or other claims erroneously styled as claims *under a contract.*

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rates provided for by the State statute or specification.

(g) In cases where SHAs affirmatively recover compensatory damages through contract claims, cross-claims, or counterclaims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall

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be credited to the project or projects from which the claim or claims arose.

[50 FR 41885, Oct. 16, 1985; 50 FR 46282, Nov. 7, 1985]

§ 635.121 Changes and extra work.

(a) Subsequent to authorization by the division administrator to proceed with a project or any undertaking thereunder, no change shall be made which will increase the cost of the project to the Federal Government or alter the termini, character or scope of the work without prior authorization by the division administrator.

(b) All major changes in the plans and contract provisions and all major extra work must be approved in writing by the division administrator in advance of their effective dates except that when emergency or unusual conditions justify, the division administrator may, give tentative advance approval orally to such changes or extra work and ratify such approval in writing as soon thereafter as practicable. For minor changes and minor extra work written approval is necessary but such approval may be given retroactively at the discretion of the division administrator. Such minor changes and minor extra work items would include, but not necessarily be limited to, modifications in construction items within the scope of the plans and contract provisions when such modifications are required during the progress of construction.

(c) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the division administrator.

§ 635.122 Contract time and contract time extensions.

Contract time extensions granted by a State highway agency which affect project costs or liquidated damages, shall be subject to the concurrence of the division administrator and will be considered in determining the amount of Federal participation. To be approved by the division administrator, extensions of contract time must be fully justified and adequately documented.

§ 635.123 Submission of contract and force account documents.

A conformed copy of the contract between the State highway agency and the construction contractor and of each force account agreement shall be furnished to the division administrator as soon as practicable after it is executed.

§ 635.124 Labor and employment.

(a) No convict labor, unless performed by convicts who are on parole, supervised release, or probation, shall be employed in construction or used for maintenance or any other purpose at the site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the State highway agency.

(b) No procedure or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project. The selection of labor to be employed by the contractor on any Federal-aid project shall be of his own choosing.

(c) Employment shall be provided without regard to race, color, religion, sex, or national origin.

(d) The advertisement or call for bids on any contract for the construction of a project on the Federal-aid system either shall include the minimum wage rates determined therefor by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are a part of the contract covering the project.

(e) When construction work on Federal-aid highway is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct Federal contracts shall be applicable.

[39 FR 35152, Sept. 30, 1974, as amended at 48 FR 16483, Apr. 18, 1983; 53 FR 1922, Jan. 25, 1988]

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§ 635.125 Health and safety.

Contracts for projects shall include provisions designated (a) to insure full compliance with all applicable Federal, State and local laws governing safety, health and sanitation, and (b) to require that the contractor shall provide all safeguards, safety devices and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

§ 635.126 Termination and default of contract.

(a) All contracts exceeding $10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) When a Federal-aid contract is terminated by the SHA, the extent of Federal-aid participation in the contract costs, including final settlement, will depend upon the merits of the individual case. In no event will Federal funds participate in any allowance for anticipated profit on work not performed.

(c) Normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when an SHA awards the contract for completion of a defaulted or previously terminated Federal-aid contract. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract, whichever amount is the lesser.

(d) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA would then consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

[52 FR 36921, Oct. 2, 1987]

§ 635.127 False statements.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

United States Code, title 18, section 1020, reads as follows:

Whoever, being an officer, agent, or employee of the United States, or any State or Territory, or whoever, whether a person, association, firm or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever, knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

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Whoever knowingly makes any false statement or false representation as to the material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

Shall be fined not more than $10,000 or imprisoned not more than 5 years or both.

§ 635.128 Determination and documentation of pay quantities.

(a) The State highway agency shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Records of initial source documents pertaining to the determination of pay quantities, are among those records and documents which must be retained pursuant to 23 CFR part 17.

§ 635.129 Record of materials, supplies, and labor.

(a) The provisions in this section are required to facilitate FHWA's efforts to compile data on Federal-aid contracts for the establishment of highway construction usage factors.

(b) On all Federal-aid primary, urban, and Interstate System contracts, except those which provide solely for the installation of protective devices at railroad crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 the SHA's shall require the contractor:

(1) To become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractors of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract;

(2) To maintain a record of the total cost of all materials and supplies purchased for and incorporate in the work, and also the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown;

(3) To furnish, upon the completion of the contract, to the SHA on Form FHWA-47 together with the data required in paragraph (b)(2) of this section relative to materials and supplies a final labor summary for all contract work indicating the total hours worked and the total amount earned.

(c) Upon receipt from the contractor, the SHA shall promptly transmit the Form FHWA-47 to the Division Administrator in accordance with the instructions printed in the form.

(Approved by the Office of Management and Budget under control number 2125-0033)

[52 FR 36921, Oct. 2, 1987]

§ 635.130 Payroll, weekly statement, and final labor certificate.

(a) For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the SHA for the period set forth in 23 CFR part 17 for review as needed by the FHWA, the Department of Labor, the General Accounting Office, or other agencies.

(b) Upon completion of the contract, the contractor shall submit to the SHA contracting officer, for transmission to the FHWA with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen, and guards employed on the project, in the following form:

The undersigned contractor on

_____

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen, and guards directly employed or employed by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice, trainee, watchmen, or guard conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title: _____

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(Approved by the Office of Management and Budget under control number 1215-0140)

[52 FR 36922 Oct. 2, 1987]

§ 635.131 Differing site conditions, suspensions of work and significant changes in the character of work.

(a) Except as provided in paragraph (b) of this section, the following contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) *Differing site conditions.* (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of his/her determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the SHAs at their option.)

(2) *Suspensions of work ordered by the engineer.* (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The engineer will notify the contractor of his/her determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

(3) *Significant changes in the character of work.* (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alter-

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ations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term *significant change* shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses.

[54 FR 4274, Jan. 30, 1989]

Subpart B—Force Account Construction

§ 635.201 Purpose.

The purpose of this subpart is to prescribe procedures in accordance with 23 U.S.C. 112(b) for a State highway agency to request approval that highway construction work be performed by some method other than contract awarded by competitive bidding.

[48 FR 22912, May 23, 1983]

§ 635.202 Application.

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State highway agency or a subdivision thereof in pursuant of agreements between any other State highway agency and the Federal Highway Administration (FHWA). This subpart does not apply to projects constructed under a Certification Acceptance Plan in those States where the Secretary has discharged his/her responsibility pursuant to 23 U.S.C. 117, except where employees of a political subdivision of a State are working on a project outside such political subdivision.

[48 FR 22912, May 23, 1983]

§ 635.203 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) A *State highway agency* is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency* if the context so implies.

(b) Except as provided for as emergency repair work in § 668.105(i) and in § 635.204(b), the term *some other method* of construction as used in 23 U.S.C. 112(b) shall mean the *force account* method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed

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herein for force account work will apply.

(c) The term *force account* shall mean the direct performance of highway construction work by a State highway agency, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.

(d) The term *county* shall mean any county, township, municipallty or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

(e) The term *cost effective* shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

(f) For the purpose of this part, an *emergency* shall be deemed to exist when emergency repair work as provided for in § 668.105(i) is necessary or when a major element or segment of the highway system has failed and the situation is such that competitive bidding is not possible or is impractical because immediate action is necessary to:

(1) Minimize the extent of the damage,

(2) Protect remaining facilities, or

(3) Restore essential travel.

This definition of *emergency* has no applicability to the Emergency Relief Program of 23 CFR part 668.

[39 FR 35158, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983; 52 FR 45172, Nov. 25, 1987]

§ 635.204 Determination of more cost effective method or an emergency.

(a) Congress has expressly provided that the contract method based on competitive bidding shall be used by a State highway agency or county for performance of highway work financed with the aid of Federal funds unless the State highway agency demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

(b) When a State highway agency determines it necessary due to an emergency to undertake a federally financed highway construction project by force account or negotiated contract method, it shall submit a request to the Division Administrator identifying and describing the project, the kinds of work to be performed, the method to be used, the estimated costs, the estimated Federal Funds to be provided, and the reason or reasons that an emergency exists.

(c) Except as provided in paragraph (b) of this section, when a State highway agency desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.205(b), be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kind of work to be performed, the estimated costs, the estimated Federal funds to be provided, and the reason or reasons that force account for such project is considered cost effective.

(d) The Division Administrator shall notify the State highway agency in writing of his/her determination.

[52 FR 45172, Nov. 25, 1987]

§ 635.205 Finding of cost effectiveness.

(a) It may be found cost effective for a State highway agency or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights or resposibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

(b) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that by reason of the inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar types of facilities owned or operated by a public agency, a railroad, or a utility company provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.204(c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with

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its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility service to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to a major installation project such as an extensive highway lighting system.

[52 FR 45173, Nov. 25, 1987]

Subpart C—Physical Construction Authorization

SOURCE: 40 FR 17251, Apr. 18, 1975, unless otherwise noted.

§ 635.301 Purpose.

To prescribe the policies and procedures under which a State highway agency may be authorized to advance a Federal-aid highway project to the physical construction stage.

§ 635.303 Applicability.

The provisions of this subpart are applicable to all Federal-aid highway construction projects except projects constructed under an approved Certification Acceptance Plan.

§ 635.305 Physical construction.

For purposes of this subpart the physical construction of a project is considered to consist of the actual construction of the highway itself with its appurtenant facilities. It includes any removal, adjustment or demolition of buildings or major obstructions, and utility or railroad work that is a part of the contract for the physical construction.

§ 635.307 Coordination.

(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost for the physical construction will occur.

(b) All right-of-way clearance, utility, and railroad work performed separately from the contract for the physical construction of the project are to be accomplished in accordance with provisions of the following:

(1) 23 CFR part 140, subpart I;
(2) 23 CFR part 646, subpart B;
(3) 23 CFR part 713, subpart A; and
(4) 23 CFR part 645, subpart A.

[40 FR 17251, Apr. 18, 1975, as amended at 40 FR 25585, June 17, 1975]

§ 635.309 Authorization.

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) therefor have been approved.

(b) A statement is received from the State, either separately or combined with the information required by § 635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

(c) A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

(1) All necessary rights-of-way, including control of access rights when

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pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.

(2) Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. The State may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the State requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefor including identification of each such parcel will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

(d) The State highway agency in accord with 23 CFR 771.111(h), has submitted public hearing transcripts, certifications and reports pursuant to 23 U.S.C. 128.

(e) An affirmative finding of cost effectiveness or that an emergency exists has been made as required by 23 U.S.C. 112, when construction by some method other than contract based on competitive bidding is contemplated.

(f) Minimum wage rates determined by the Department of Labor in accordance with the provisions of 23 U.S.C. 113, are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

(g) A statement has been received that right-of-way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right-of-way is not required.

(h) A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required.

(i) The FHWA Division Administrator has determined that appropriate measures have been included in the PS&E in keeping with approved guidelines, for minimizing possible soil erosion and water pollution as a result of highway construction operations.

(j) The FHWA Division Administrator has determined that requirements of 23 CFR part 771 have been fulfilled and appropriate measures have been included in the PS&E to ensure that conditions and commitments made in the development of the project to mitigate environmental harm will be met.

(k) Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the FHWA Division Administrator that the provisions of 23 CFR 645.119(b) have been fulfilled.

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(l) The FHWA Division Administrator has verified the fact that adequate replacement housing is in place and has been made available to all affected persons.

(m) Where applicable, areawide agency review has been accomplished as required by 42 U.S.C. 3334 and 4231 through 4233.

(n) The FHWA Division Administrator has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform to the standards developed by the Secretary of Transportation or mandates of Federal law and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations, and related logos and symbols.

(o) The FHWA Division Administrator has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs, for the life of the construction project, in accordance with section 154 of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

[40 FR 17251, Apr. 18, 1975; 40 FR 36319, Aug. 20, 1975, as amended at 47 FR 47239, Oct. 25, 1982; 49 FR 28550, July 13, 1984; 50 FR 34093, Aug. 23, 1985; 52 FR 32669, Aug. 28, 1987; 52 FR 45173, Nov. 25, 1987; 53 FR 1921, Jan. 25, 1988; 54 FR 47075, Nov. 9, 1989]

Subpart D—General Material Requirements

SOURCE: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

§ 635.401 Purpose.

The purpose of this subpart is to prescribe requirements and procedures relating to product and material selection and use on Federal-aid highway projects.

§ 635.403 Definitions.

As used in this subpart, the following terms have the meanings indicated:

(a) *FHWA Division Administrator* means the chief Federal Highway Administration (FHWA) official assigned to conduct business in a particular State;

(b) *Material* means any tangible substance incorporated into a Federal-aid highway project;

(c) *PS&E* means plans, specifications, and estimates;

(d) *Special provisions* means additions and revisions to the standard and supplemental specifications applicable to an individual project;

(e) *Standard specifications* means a compilation in book form of specifications approved for general application and repetitive use;

(f) *State* has the meaning set forth in 23 U.S.C. 101;

(g) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction;

(h) *Supplemental specifications* means approved additions and revisions to the standard specifications.

§ 635.405 Applicability.

The requirements and procedures prescribed in this subpart apply to all contracts relating to Federal-aid highway projects, except those constructed under a Certification Acceptance Plan.

§ 635.407 Use of materials made available by a public agency.

(a) Contracts for highway projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. Exception to this requirement may be made when there is a definite finding by the State highway agency and concurred in by the FHWA Division Administrator, that it is in the public interest to require the contractor to use material furnished by the State highway agency or from sources designated by the State highway agency. In cases such as this, the FHWA does not expect mutual sharing of costs unless the State highway agency receives a related credit from another agency or political subdivision of the State. Where such a credit does accrue to the State highway agency, it shall be applied to the Federal-aid project in-

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volved. The designation of a mandatory material source may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. Otherwise, if a State highway agency proposal to designate a material source for mandatory use would result in higher project costs, Federal-aid funds shall not participate in the increase even if the designation would conserve other public funds.

(b) The provisions of paragraph (a) of this section will not preclude the designation in the plans and specifications of sources of local natural materials, such as borrow aggregates, that have been investigated by the State highway agency and found to contain materials meeting specification requirements. The use of materials from such designated sources shall not be mandatory unless there is a finding of public interest as stated in paragraph (a) of this section.

(c) Federal funds may participate in the cost of specifications materials made available by a public agency when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in § 635.114 of this chapter.

(d) To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State highway agency and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federation participation will be limited to the unit cost of such material to the State highway agency.

(e) When the State highway agency or another public agency owns or has control over the source of a local natural material the unit price at which such material will be made available to the contractor must be stated in the plans or special provisions. Federal participation will be limited to (1) the cost of the material to the State highway agency or other public agency; or (2) the fair and reasonable value of the material, whichever is less. Special cases may arise that will justify Federal participation on a basis other than that set forth above. Such cases should be fully documented and receive advance approval by the FHWA Division Administrator.

(f) Costs incurred by the State highway agency or other public agency for acquiring a designated source or the right to take materials from it will not be eligible for Federal participation if the source is not used by the contractor.

(g) The contract provisions for one or a combination of Federal-aid projects shall not specify a mandatory site for the disposal of surplus excavated materials unless there is a finding by the State highway agency with the concurrence of the FHWA Division Administrator that such placement is the most economical except that the designation of a mandatory site may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost.

§ 635.409 Restrictions upon materials.

No requirement shall be imposed and no procedure shall be enforced by any State highway agency in connection with a project which may operate:

(a) To require the use of or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or

(b) To prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the FHWA Administrator to carry out such policies.

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§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) includes no permanently incorporated steel materials, or (ii) if steel materials are to be used, all manufacturing processes for these materials must occur in the United States.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel materials by more than 25 percent.

(4) When steel materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if;

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the FEDERAL REGISTER for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

(d) Standard State and Federal-aid contract procedures may be used to

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assure compliance with the requirements of this section.

(23 U.S.C. 315, sec. 10 of Pub. L. 98-229, 98 Stat. 55, sec. 165 of Pub. L. 97-424, 96 Stat. 2136 and 49 CFR 1.48(b))

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984]

§ 635.411 Material or product selection.

(a) Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless:

(1) Such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable unpatented items; or

(2) The State highway agency certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists; or

(3) Such patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.

(b) When there is available for purchase more than one nonpatented, nonproprietary material, semifinished or finished article or product that will fulfill the requirements for an item of work of a project and these available materials or products are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated prices for the related item(s) of work are estimated to be approximately the same, the PS&E for the project shall either contain or include by reference the specifications for each such material or product that is considered acceptable for incorporation in the work. If the State highway agency wishes to substitute some other acceptable material or product for the material or product designated by the successful bidder or bid as the lowest alternate, and such substitution results in an increase in costs, there will not be Federal-aid participation in any increase in costs.

(c) A State highway agency may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the Division Administrator as being in the public interest. When the Division Administrator's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.

(d) Appendix A sets forth the FHWA requirements regarding (1) the specification of alternative types of culvert pipes, and (2) the number and types of such alternatives which must be set forth in the specifications for various types of drainage installations.

(e) Reference in specifications and on plans to single trade name materials will not be approved on Federal-aid contracts.

§ 635.413 Guaranty and warranty clauses.

(a) Except as provided in paragraph (b) of this section, clauses that require the contractor to guarantee or warrant materials and workmanship or to otherwise maintain the work for a specified period after its satisfactory completion by the contractor and its final acceptance by the State, will not be approved for use in Federal-aid contracts. Work performed and materials replaced under such guaranty or warranty clauses after final acceptance of work are not eligible for Federal participation.

(b) Contracts which involve furnishing and/or installing electrical or mechanical equipment should generally include contract clauses that require:

(1) Manufacturer's warranties or guarantees on all electrical and mechanical equipment consistent with those provided as customary trade practice, or

(2) Contractors' warranties or guarantees providing for satisfactory in-service operation of the mechanical and electrical equipment and related components for a period not to exceed 6 months following project acceptance.

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§ 635.417 Convict produced materials.

(a) Materials produced by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

(1) Produced by convicts who are on parole, supervised release, or probation from a prison or

(2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.

(b) *Qualified prison facility* means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.

[53 FR 1923, Jan. 25, 1988]

APPENDIX A TO SUBPART D—SUMMARY OF ACCEPTABLE CRITERIA FOR SPECIFYING TYPES OF CULVERT PIPES

Type of drainage installation	Alternatives required			AASHTO designations to be included with alternatives	Application	Remarks
	Yes	No	Number			
Cross drains under high-type pavement.[1]	.....	X	.....	.....	Statewide	Any AASHTO-approved material.[2]
Other cross-drain installations.	X	.....	3 minimum	M-170 and M-190.	.....do.....	Do.[2]
Side-drain installations	X	.....	.....do	M-36	.....do.....	Do.[2]
Special installation conditions.	.....	X	.....	.....	Individual installation.	Specified to meet special conditions.
Special drainage systems (storm sewers, inverted siphons, etc.).	.....	X	.....	.....	.....do.....	Specified to meet site requirements.

[1] High-type pavement is generally described as FHWA construction type codes I, J, K, L, and plant mix and penetration macadam segments, respectively shown in the right-hand columns of type codes G and H having a combined thickness of surface and base of 7 in or more (or equivalent) or that are constructed on rigid bases.

[2] Types not included in currently approved AASHTO specifications may be specified if recommended by the State with adequate justification and approved by FHWA.

Subpart E—Interstate Maintenance Guidelines

AUTHORITY: 23 U.S.C. 109(m), 116, 119(b), and 315; 49 CFR 1.48(b).

SOURCE: 45 FR 20793, Mar. 31, 1980, unless otherwise noted.

§ 635.501 Purpose.

To prescribe Interstate maintenance guidelines and establish the policy and procedures to insure that the condition of Interstate routes is maintained at the level required by the purposes for which they were designed.

§ 635.503 Policy.

The policy of the FHWA is to insure that each State highway agency develops and implements an Interstate maintenance program conforming to the guidelines in this subpart. The maintenance program shall be consistent with practices deemed necessary to adequately provide for motorist safety, preservation of the highways, rideability, and aesthetics.

§ 635.505 Maintenance guidelines.

(a) The following critical elements should serve to direct the development and implementation of an Interstate maintenance program in each State.

(1) *Roadway surfaces.* Preservation of the structural integrity of the roadway and the safety and comfort of the user. This includes a safe, smooth, skid-resistant surface, as close as practical to the original, or subsequently improved, grade and cross section.

(2) *Shoulders.* Preservation of a safe, smooth surface which is free of obstruction, contiguous with the adjacent roadway surface, and as close as practical to the original, or subsequently improved, grade and cross section.

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(3) *Roadside.* Preservation of the roadside in a safe, pleasant, and forgiving manner through vegetation management, erosion control, and litter pick-up.

(4) *Drainage.* Preservation of hydraulic capacity for which originally designed.

(5) *Bridges and tunnels.* Preservation of the structural and operational characteristics for which originally designed. These include safe, smooth, skid-resistant surfaces; proper surface drainage; and adequate functioning bearing devices and substructural elements. Replacement or repair of structural railing and approach guardrail should be done without unreasonable delay. Tunnels should be cleaned, properly lighted, and adequately ventilated.

(6) *Snow and ice control.* Preservation of the roadway safety, efficiency, and environment during winter driving conditions.

(7) *Traffic control devices.* Preservation of clean, legible, visible, and properly functioning traffic control devices. This includes pavement markings, signing, delineators, signals, etc.

(8) *Safety appurtenances.* Replacement of damaged, defective, and/or inoperable devices without unreasonable delay. This includes guardrails, impact attenuators, breakaway supports, barriers, etc.

(9) *Safety rest areas.* Preservation and operation of facilities reasonably necessary for the convenience, relaxation, and informational needs of the user.

(10) *Access control.* Preservation of the originally designed access control, elimination of unauthorized traffic movement, and prevention of improper or unauthorized use of the highway rights-of-way.

(11) *Traffic safety in maintenance and utility work zones.* Procedures that will aid the safety of motorists and maintenance workers. The procedures shall be consistent with the provisions of 23 CFR part 630, subpart J, and part VI of the Manual on Uniform Traffic Control Devices.[1]

(b) All replacements and repairs should conform to the currently approved design standards (23 CFR part 625) for all critical elements listed in paragraph (a) of this section. Exceptions for minor repairs must be clearly defined in a State's maintenance program.

(c) These guidelines shall be interpreted to expect that repairs and maintenance will be performed without unreasonable delay, that variations from the State's approved program will be allowed in situations involving emergency or unforeseeability, and that the State will seek to attain a high level of maintenance.

§ 635.507 Implementation.

(a) Each State highway agency shall prepare an initial program submission which shall include a description of the State's Interstate maintenance program; a discussion of the method by which the State manages its program, including copies of operating documents; and a general description of the level of resources and activity the State intends to devote to attain the objectives stated under each of the critical elements in § 635.505(a). This initial submission shall be made to the FHWA no later than 120 days after the effective date of this subpart. The FHWA shall review each State's initial program submission for conformance with the provisions of this subpart and approve or disapprove the submission on the basis of that review.

(b) Within one year after the effective date of this subpart, and by January 1 of each subsequent year, each State highway agency shall certify to the FHWA that it has an Interstate maintenance program as required by this subpart and that its Interstate routes are being maintained in accordance with that program.

(c) Beginning in 1981 and each year thereafter, each State highway agency shall update its initial program submission by providing the FHWA with a discussion of:

[1] Available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (GPO Stock Number 050-001-81001-8), and for inspection and copying as prescribed in 49 CFR 7, app. D.

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(1) The condition of the State's Interstate routes and deficiencies,

(2) State maintenance priorities,

(3) The State maintenance budget, and

(4) Exceptions and/or revisions to the initial submission.

(d) The FHWA shall review each State's annual submission for conformance with the provisions of this subpart and monitor the implementation of each State's program in accordance with the review procedures described in the FHWA Maintenance Review Manual [2] and the Federal-Aid Highway Program Manual, volume 6, chapter 4, section 3, subsection 1.[3] If differences between the State and the FHWA cannot be resolved concerning the adequacy of the Interstate maintenance program's level of resources and activity, the FHWA shall initiate action under § 635.509.

§ 635.509 Deficient or unsatisfactory maintenance.

(a) *Fund reduction.* If a State fails to certify as required by this subpart, or if the Secretary determines that a State is not adequately maintaining its Interstate routes in accordance with a maintenance program as required by this subpart, the Federal-aid highway funds apportioned to the State for the next fiscal year (after the date on which the State must certify) shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104. In addition, future project approvals may be withheld by the Secretary under 23 U.S.C. 116.

(b) *Procedure for reduction of funds.* (1) If it appears to the Federal Highway Administrator that a State has not submitted a certification conforming to the requirements of this subpart, or that a State is not adequately maintaining its Interstate routes in accordance with a maintenance program as required by this subpart, the Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the State that it may within 30 days from the date of the letter request a hearing to show cause why it should not be found in nonconformity. If the State informs the Administrator before the end of the 30-day period that it wishes to attempt to resolve the matter informally, the Administrator may extend the time for requesting a hearing by an additional 30 days. In the event of a request for informal resolution, the State and the Administrator (or designees) shall promptly schedule a meeting to resolve the matter.

(2) If a State does not request a hearing in a timely fashion as provided in paragraph (b)(1) of this section, the Administrator shall forward the proposed determination to the Secretary. Upon approval by the Secretary, the provisions of paragraph (a) of this section shall take effect immediately.

(3) If a State requests a hearing, the Secretary shall expeditiously convene a hearing on the record, which shall be conducted according to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this subpart. If the Secretary determines that the State is in nonconformity, the provisions of paragraph (a) of this section shall take effect immediately.

(4) The Secretary may reduce 10 percent of a State's apportionment of funds under 23 U.S.C. 104 prior to the administrative determination under this section in order to prevent the apportionment to the State of funds which would be affected by a determination of nonconformity.

(5) Funds withheld pursuant to a final administrative determination under this section shall be reapportioned to all other eligible States one year from the date of this determination, unless before this time the Secretary determines, on the basis of information submitted by the State and the FHWA, that the State has come into conformity with this section. If the Secretary determines that the State has come into conformity, the with-

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[2, 3] Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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held funds shall be released to the State.

(6) The reapportionment of funds under paragraph (b)(5) of this section shall be stayed during the pendency of any proceeding for judicial review of a final administrative determination of nonconformity made by the Secretary.

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart A—[Reserved]

Subpart B—Sampling and Testing of Materials and Construction

Sec.
637.201 Purpose.
637.203 Definitions.
637.205 Policy.
637.207 Sampling and testing program.
637.209 Laboratory inspection program.
APPENDIX A TO SUBPART B—GUIDE LETTER OF CERTIFICATION BY STATE ENGINEER

Subpart A—[Reserved]

Subpart B—Sampling and Testing Materials and Construction

AUTHORITY: 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

SOURCE: 51 FR 40417, Nov. 7, 1986, unless otherwise noted.

§ 637.201 Purpose.

To prescribe policies, procedures, and guidelines relating to sampling and testing of materials and construction in Federal-aid highway projects.

§ 637.203 Definitions.

(a) *Acceptance samples and tests.* All of the samples and tests performed by State personnel or a State representative used for determining the quality and acceptability of the materials and workmanship which have been or are being incorporated in the project.

(b) *Independent assurance samples and tests.* Independent samples and tests or other procedures performed by State personnel who do not normally have direct responsibility for process control and acceptance sampling and testing. They are used for the purpose of making independent checks on the reliability of the results obtained in acceptance sampling and testing and not for determining the quality and acceptability of the materials and workmanship directly.

(c) *National reference laboratories.* The American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL) and the Cement and Concrete Reference Laboratory (CCRL).

(d) *Process control samples and tests.* All of those samples and tests that are performed in order to make adjustments to the contractors' operations.

(e) *State personnel.* An employee or employees of a State agency.

(f) *State representative.* An employee or employees of a State or public agency or a consultant/independent laboratory which is employed, paid by and directly accountable to the State or public agency.

§ 637.205 Policy.

(a) *Sampling and testing program.* Each State highway agency shall develop a sampling and testing program which will provide assurance that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207, and be approved by the FHWA.

(b) *Laboratory inspection program.* Each State highway agency shall participate in the regular laboratory inspection and comparative sample testing program provided by the National Reference Laboratories or a comparable laboratory approved by FHWA.

§ 637.207 Sampling and testing program.

Each State's acceptance and independent assurance sampling and testing program shall provide for the following:

(a) The specific location in the construction or production operation at which sampling and testing is to be accomplished for acceptance or independent assurance testing.

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(b) Frequency guide schedules for acceptance and independent assurance sampling and testing which will give general guidance to personnel responsible for the program, yet give them reasonable latitude for adaptation to specific project needs.

(c) Independent assurance sampling and testing shall be performed by State personnel who have no direct responsibility for acceptance sampling and testing using test equipment other than that assigned to the project. The program may permit a reasonable portion of the independent samples and tests to be accomplished by independent observation of the acceptance sampling and testing.

(d) A prompt comparison of acceptance test results with independent assurance test results and documentation of that comparison.

(e) The preparation and submission of a materials certification, conforming in substance to appendix A of this regulation, to the FHWA Division Administrator for each construction project.

§ 637.209 Laboratory inspection program.

(a) Each State shall have its central laboratory included in a regular laboratory inspection and comparative sample testing program such as that provided by the National Reference Laboratories.

(b) Each State is required to authorize the National Reference Laboratories, or the other comparable laboratory used in its laboratory inspection program, to submit copies of all laboratory inspection reports to the appropriate regional and division offices of the FHWA.

APPENDIX A TO SUBPART B—GUIDE LETTER OF CERTIFICATION BY STATE ENGINEER

Date _____

Project No. _____

This is to certify that:

The results of the tests on acceptance samples indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications; and such results compare favorably with the results of the independent assurance sampling and testing.

Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

Director of Laboratory
or other
Appropriate State Official.

PART 640—CERTIFICATION ACCEPTANCE

Sec.

640.101 Purpose.
640.103 Definitions.
640.105 Effect of certification acceptance.
640.107 Coverage.
640.109 Requirements for certification acceptance.
640.111 Content of State certification.
640.113 Procedures.
640.115 Evaluations.
640.117 Rescission.
APPENDIX A—FHWA REPORTS

AUTHORITY: 23 U.S.C. 101(e), 117, and 315; 49 CFR 1.48(b).

SOURCE: 43 FR 46963, Oct. 12, 1978, unless otherwise noted.

§ 640.101 Purpose.

The purpose of this regulation is to provide instructions for preparation and acceptance of State certification proposals to accomplish the policies and objectives of title 23 U.S.C., using State laws, regulations, directives, and standards. Also covered are procedures for administering projects under certification acceptance and evaluating State performance.

§ 640.103 Definitions.

As used in this regulation:

(a) *Certification acceptance (CA).* The alternative procedure authorized by 23 U.S.C. 117(a) for administering Federal-aid projects not on the Interstate System.

(b) *Secondary road plan.* A written statement setting forth the standards and procedures adopted by the State highway agency to be used in the administration of Federal-aid projects on the Federal-aid secondary (FAS) system (23 CFR part 642).

(c) *State certification.* A written statement prepared by a State highway agency setting forth the laws, regulations, directives, and standards it

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will use, or cause to be used, in the administration of certain highway projects.

[43 FR 46963, Oct. 12, 1978, as amended at 47 FR 47239, Oct. 25, 1982]

§ 640.105 Effect of certification acceptance.

(a) Acceptance of a State certification permits a State to discharge certain responsibilities otherwise assigned to the Secretary under title 23 U.S.C., for Federal-aid projects. A State may permit performance and project certification by capable local governments.

(b) Acceptance of a State certification does not constitute a commitment or obligation of Federal funds.

(c) Acceptance of a State certification does not preclude FHWA access to and review of a Federal-aid project at any time.

(d) Certification acceptance as an alternative procedure does not replace the fundamental provisions of law in title 23 with respect to the basic structure of the Federal-aid highway program, such as the authorization of funds (23 U.S.C. 102), Federal-aid systems (23 U.S.C. 103), apportionments (23 U.S.C. 104), programs (23 U.S.C. 105), designation of urbanized area boundaries (23 U.S.C. 101(a)), allocation of urban system funds (23 U.S.C. 150), Federal share payable (23 U.S.C. 120), toll roads and bridges (23 U.S.C. 129), and maintenance (23 U.S.C. 116). Acceptance of a CA proposal does not preclude application of any provision of title 23 that may be advantageous to the State.

(e) Nothing in this regulation shall affect or discharge any responsibility or obligation of the FHWA under any Federal law other than title 23.

§ 640.107 Coverage.

(a) Certification acceptance may apply to projects on all Federal-aid highway systems except the Interstate System. If other FHWA regulations and title 23 permit, projects not on a Federal-aid system may be administered under the provisions of an accepted State certification.

(b) The CA procedure shall not apply to transportation planning and research (23 U.S.C. 134 and 307), highway safety (chapter 4, title 23), or those public transportation projects not administered by FHWA under title 23.

(c) A State certification may provide for either full or partial coverage of the eligible systems, programs, phases of work, and classes of projects.

(d) A simplified CA application procedure is provided in paragraph (b) of § 640.109 of this regulation should a State desire to limit coverage to projects which are both (1) determined to be categorical exclusions in accordance with 23 CFR part 771 and (2) estimated to cost less than $1 million for physical construction. Such limited-coverage State certification will apply only to the FHWA responsibilities for project plans, specifications, estimates, surveys, contract award, design, inspection, and/or construction.

[43 FR 46963, Oct. 12, 1978, as amended at 55 FR 4836, Feb. 12, 1989]

§ 640.109 Requirements for certification acceptance.

(a) Acceptance of either a full or partial coverage State certification as described in § 640.107(c) will be based upon:

(1) A State request and identification of the State laws, regulations, directives, and standards that will accomplish the policies and objectives contained in or issued pursuant to title 23 U.S.C., and

(2) An FHWA finding that the State highway agency has the capability to carry out projects in accordance with such State requirements.

(i) State laws, regulations, directives, and standards, either separately or collectively, must be aimed at accomplishing the following title 23 policies and objectives:

(A) Public involvement in the development of projects in the location and design stages,

(B) Application of appropriate design and construction standards,

(C) Emphasis on increasing safety in location, design, and construction of projects,

(D) Controls to assure quality and economy of construction and maintenance,

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(E) Provision of adequate signing, marking, and traffic control devices,

(F) Minimizing adverse economic, social, and environmental impacts of any project,

(G) Equal employment opportunity, nondiscrimination on the basis of sex, and highway construction training,

(H) Competitive bidding and payment of prevailing wage rates on construction contracts, and

(I) Preservation of natural beauty.

(ii) The finding that the State highway agency has the capability to carry out project responsibilities will be based on an FHWA evaluation of the State's performance and resources.

(A) Evaluation of a State's performance shall be based on previously conducted reviews, including secondary road plan reviews, reviews under 23 U.S.C. 109(h), safety reviews and reports, audit reports, reviews of State bidding practices, inspections in depth, and maintenance inspections. If these reviews are considered to be insufficient to form a conclusive judgment, they may be supplemented by inquiries or additional reviews in specific areas to determine the State's performance. These additional reviews may involve examination of a sample of typical projects in varying degrees of development.

(B) Evaluation of a State's resources shall be based on previously conducted reviews, including financial and administrative studies and reports, or on FHWA's general knowledge of the State and its highway agency. If this information is considered to be insufficient to form a reasonable judgment of State resource adequacy, inquiries or additional reviews may be made of the State highway agency. These inquiries or reviews may include such things as the availability of professional and technical personnel, training provided State personnel, control of contract administration, the planned reassignment of responsibilities and/or personnel if the State certification is accepted, and the State's internal review practices.

(b) Acceptance of a limited-coverage State certification as described in § 640.107(d) will be based on an evaluation of the State's operations and performance under an approved secondary road plan. These evaluations must support findings that:

(1) The policies and objectives of title 23 U.S.C., are being accomplished under the State's approved secondary road plan and State procedures accepted under 23 U.S.C. 109(h). Supplementary standards and procedures appropriate to the types of projects to be added to the coverage must provide similar assurance, and

(2) The State's performance under the plan has been found to be satisfactory in the last 4 years by an FHWA evaluation of the State's operation.

(c) A State certification may be accepted in whole or in part, depending on FHWA findings. Where minor deficiencies are found, acceptance may be conditioned or may exclude the affected State operations until the deficiences are corrected. Where deficiencies are found which are of such magnitude as to create doubt that the policies and objectives of title 23 would be accomplished, the State certification will not be accepted until the deficiencies are corrected.

[43 FR 46963, Oct. 12, 1978, as amended at 47 FR 47239, Oct. 25, 1982]

§ 640.111 Content of State certification.

(a) The State certification shall include the following:

(1) The name of the State highway agency and the legal authority which permits such agency to accomplish the policies and objectives contained in or issued pursuant to title 23 U.S.C.,

(2) A statement of the systems, programs, phases of work, and classes of projects or combinations thereof that the State is including in the certification being submitted for acceptance,

(3) For submissions providing full or partial coverage of projects as described in § 640.107(c), a listing of the title 23 policies and objectives described in § 640.109(a)(2)(i) and citation of State laws, regulations, directives, and standards that will be applied to accomplish each of them. Any of the policies and objectives that are not applicable due to partial coverage may be omitted. For submissions providing limited coverage as described in § 640.109(b), supplementary standards and procedures which, together with

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the State's approved secondary road plan, will apply to the types of projects to be covered. Design standards include noise, geometric, hydraulic, structural (including pavements), and traffic control device standards. Construction standards include standard plans and standard specifications covering contract, construction, and material requirements, and

(4) A description of the State's methods for assuring local government knowledge of an compliance with State and Federal requirements where they perform services on projects administered under this alternative procedure.

(b) Existing assurances and formal agreements between the State and FHWA with respect to equal employment opportunity, current billing, and control of outdoor advertising will continue in full force and effect and may be incorporated by reference. Likewise, the State's procedures accepted under 23 U.S.C. 109(h) may be incorporated by reference.

(c) State certifications are to be signed by the chief official of the State highway agency and submitted through the FHWA Division Administrator.

[43 FR 46963, Oct. 12, 1978, as amended at 47 FR 47239, Oct. 25, 1982]

§ 640.113 Procedures.

(a) Established procedures for system revisions, program actions, and record retention will not be affected by acceptance of a State certification.

(b) Authorization by FHWA to proceed with work on a CA project shall be in writing in response to a request from the State highway agency.

(c) If the State finds that exceptions to CA procedures or standards are appropriate on a project, such exceptions shall be brought promptly to the attention of the FHWA for consideration.

(d) A project agreement shall be executed as soon as practicable after authorization on form PR-2 (Federal-Aid Project Agreement), based on the best available cost estimate. Agreement amounts shall be modified promptly on Form PR-2A (Modification of Federal-Aid Project Agreement) upon the award of a contract for construction or when any other project action substantially changes total costs.

(e) Reports requested by FHWA are to be furnished by the State for projects administered under CA. (See appendix A.)

(f) The FHWA shall make an inspection of each physical construction project upon its completion. The State is to notify FHWA when a project is complete and/or ready for such inspection. Form FHWA 1446C may be used for this purpose.

(g) Final vouchers shall be submitted to the FHWA on form FHWA 1447, on which the State certifies that the plans, design, and construction for the project were in accord with the laws, regulations, directives, and standards contained in the State certification or such project exceptions as were approved by the FHWA.

(h) Revisions or amendments to State certifications will be made when necessary and processed as provided in § 640.111(c). The existing State certification is to be reviewed periodically to determine its adequacy in light of this regulation, the statutes in effect at the time of the review, and the operational reviews made by FHWA.

§ 640.115 Evaluations.

(a) Periodically, evaluations of the State's operations under CA shall be made. These evaluations shall include coverage of all areas of the State's administration of CA projects at least once every 4 years.

(b) If a failure to comply with Federal or State laws occurs and the State is unable or unwilling to effect corrective action of the deficiency, an evaluation report, together with recommendations of the regional office, shall be furnished to FHWA headquarters office for advice.

§ 640.117 Rescission.

The acceptance of a State certification may be rescinded at any time upon request of the State or if considered necessary by FHWA to protect the Federal interest. The rescission may be applied to all or part of the programs or projects covered in the State certification.

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APPENDIX A—FHWA REPORTS

NOTE: See footnote at end of table.

[Originating in the field and in program areas that can be included under certification acceptance]

Originating office and title	Format	Frequency	Due date	Respondents
Associate Administrator for Engineering and Traffic Operations (HEO)				
HNG—Force Account Affirmative Finding (except projects on FAS system).	Nar	SA	January 15, July 15	States.
HNG—Bid Price Data*	PR-45	AR	Award of contract	Do.
HNG—Report on Opening of Bids (except projects on FAS system).	Tabulation	AR	do	Do.
HHO—Federal-aid Highway Construction Contractor's Semiannual Training Report.	FHWA-1409	SA	January 20, July 20	Contractors.
HHO—Federal-aid Highway Construction Semiannual Training Report.	FHWA-1410	SA	January 30, July 30	States.
HNG—Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds*.	PR-47	AR	Completion of project	Contractors.
HNG—Lists of Candidate Bridges for Replacement.	Punched computer cards (5).	AR	As soon as possible	States.
HNG—Urban Railroad Demonstration Project Status.	Nar	Q	End of quarter plus 30.	Do.
Associate Administrator for Safety (HHS)				
HHS—Progress and Effectiveness of Unified Safety Improvement Programs (4).	Nar	A	August 31	Do.
HHS—Progress and Effectiveness of Pavement Marking Demonstration Program.	Nar with FHWA-1451	A	September 30	Do.
Associate Administrator for Right-of-Way and Environment (HRE)				
HRW—Outdoor Advertising and Junkyard Report.	FHWA-1424	Q	End of quarter plus 20.	Do.
Associate Administrator for Administration (HAD)				
HFS—Accounting Statement, Accrued Unbilled Costs.	FHWA-186	Q	End of quarter plus 8th workday.	Do.
HFS—Project Status Record	PR-37	AR	As soon as possible	Div.-Reg.
Office of Chief Counsel (HCC)				
HCC—Semi-Annual Labor Compliance Enforcement Report.	PR-1286 to be changed to FHWA-1494.	SA	January 10, July 10	Div.-Reg.

*Except any project on FAS system, or projects on the FAP or FAU systems costing less than $500,000.

PART 642—SECONDARY ROAD PLAN

Sec.

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APPENDIX A TO PART 642—FHWA REPORTS

AUTHORITY: 23 U.S.C. 101(e), 117(f), and 315; 49 CFR 1.48(b).

SOURCE: 43 FR 1332, Jan. 9, 1978, unless otherwise noted.

§ 642.101 Purpose.

The purpose of this regulation is to prescribe policies and procedures for the development and administration of secondary road plans.

§ 642.103 Definition.

Secondary road plan. A written statement setting forth the standards and procedures adopted by the State highway agency to be used in the ad-

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ministration of Federal-aid projects on the Federal-aid secondary (FAS) system. It provides for certifying that all work undertaken on covered projects was in accord with those standards and procedures. (The term *secondary road plan* is hereinafter referred to as the *plan.*)

§ 642.105 Policy.

(a) It is the policy of the Federal Highway Administration (FHWA) to extend to States maximum flexibility in selection of standards, procedures, and operations under the plan and to encourage maximum local involvement in selecting, developing, and constructing projects under the plan. Secondary road plans may include performance and project certification by capable local governments.

(b) The Federal Highway Administrator's responsibilities and obligations under Federal laws other than title 23 will not be affected by approval of a State plan.

(c) Personnel of the FHWA are available to the State for consultation and advice on plan projects.

(d) All plan projects are subject to review by FHWA at any time.

§ 642.107 Applicability.

The plan shall apply to the plans, specifications, estimates, surveys, contract awards, design, inspection, and construction of projects financed with Federal-aid highway funds on the federal-aid secondary (FAS) system. When other FHWA directives so provide, other projects may be administered under the provisions of an approved plan.

§ 642.109 Content.

(a) The plan shall include:

(1) An organization chart of the State highway agency and a description of the secondary road unit prescribed in 23 U.S.C. 302(a), which will administer the plan. Positions within the organization responsible for administration of plan project activities shall be identified,

(2) Operating procedures to be used in administering plan projects. These may be covered in State directives, manuals, operating guides or other issuances. Safety provisions and fiscal responsibility shall be specifically addressed in plan operating procedures. Procedures that are adequately covered in the State's submissions accepted under 23 U.S.C. 109(h) may be incorporated by reference.

(3) A statement of the design and construction standards applicable to plan projects. Design standards include noise, geometric, hydraulic, structural, and traffic control device standards; construction standards include standard plans and standard specifications covering contract, construction, and materials requirements, and

(4) A description of the State highway agency's methods for assuring local government knowledge of and compliance with State and Federal requirements on plan projects when such local governments accomplish any phase of the work.

(b) The plan and any subsequent revision shall be signed by the chief official of the State highway agency and submitted to the FHWA for approval.

[43 FR 1332, Jan. 9, 1978, as amended at 47 FR 47239, Oct. 25, 1982]

§ 642.111 Procedures.

(a) Established procedures for system revisions, program actions and record retention will not be affected by approval of a plan.

(b) Authorization by FHWA to proceed with any phase of a plan project shall be in writing in response to a request from the State highway agency. Such authorization shall be issued only after applicable prerequisite requirements of Federal laws and implementing regulations and directives have been satisfied (e.g., NEPA, 4(f), Civil Rights, and the Uniform Act).

(c) If the State finds that exceptions to plan procedures or standards are appropriate on a project, such exceptions shall be brought promptly to the attention of the FHWA for consideration.

(d) A project agreement shall be executed on Form PR-2 (Federal-Aid Project Agreement). Contract prices shall be used in the project agreement for physical construction items.

(e) Reports requested by FHWA are to be furnished by the State for

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projects administered under the plan. (See appendix A.)

(f) The FHWA shall make an inspection of each physical construction project upon its completion. The State is to notify FHWA when a project is complete and/or ready for such inspection. Form FHWA 1446 C may be used for this purpose.

(g) Final vouchers shall be submitted to the FHWA on Form FHWA 1447, on which the State certifies that the plans, design, and construction for the project were in accord with those standards and procedures contained in the plan or such project exceptions as were approved by the FHWA.

§ 642.113 Evaluations.

(a) Periodically, evaluations of the State's operations under the plan shall be made. These evaluations shall include coverage of all areas of the State's administration of plan projects at least once every 4 years.

(b) If a failure to comply with Federal or State laws occurs and the State is unable or unwilling to effect corrective action of the deficiency, an evaluation report, together with recommendations of the regional office, shall be furnished to FHWA Headquarters Office for advice.

§ 642.115 Withdrawal.

The approval of a secondary road plan may be withdrawn at any time upon request of the State or if considered necessary by FHWA to protect the Federal interest. The withdrawal may be applied to all or part of the projects or responsibilities in the plan.

APPENDIX A—FHWA REPORTS

[Originating in the field and in program areas that can be included under the Plan]

Original office	Title	Format	Frequency	Due date	Respondents
Associate Administrator for Engineering and Traffic Operations (HEO)					
HHO	Federal-aid highway construction contractor's semiannual training report.	FHWA-1409	SA	January 20, July 20	Contractors.
HHO	Federal-aid highway construction semiannual training report.	FHWA-1410	SA	January 30, July 30	States.
HNG	Lists of candidate bridges for replacement.	Punched computer cards (5).	AR	ASAP	Do.
Associate Administrator for Safety (HSA)					
HHS	Progress and effectiveness of unified safety improvement programs (4).	Nar	A	August 31	States.
HHS	Progress and effectiveness of pavement marking demonstration program.	Nar with FHWA 1451.	A	September 30	Do.
Associate Administrator for Administration (HAD)					
HFS	Accounting statement, accrued unbilled costs.	FHWA-186	Q	EOQ + 8th workday	States.
HFS	Project status record	PR-37	AR	ASAP	Division-Region.
Office of Chief Counsel (HCC)					
HCC	Semiannual labor compliance enforcement report.	PR-1286	SA	January 10, July 10	States, Division, Region.

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PART 645—UTILITIES

Subpart A—Utility Relocations, Adjustments, and Reimbursement

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Subpart B—Accommodation of Utilities

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645.215 Approvals.

AUTHORITY: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 26961 (May 24, 1977).

Subpart A—Utility Relocations, Adjustments, and Reimbursement

SOURCE: 50 FR 20345, May 15, 1985, unless otherwise noted.

§ 645.101 Purpose.

To prescribe the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

§ 645.103 Applicability.

(a) The provisions of this regulation apply to reimbursement claimed by a State highway agency (SHA) for costs incurred under an approved and properly executed highway agency (HA)/utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR part 645, subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR chapter I, subchapter H, Right-of-Way and Environment, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-to-cure.

(d) The FHWA's reimbursement to the SHA will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a determination shall be made by the SHA subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the SHA or HA are inapplicable, and it is intended that the FHWA be considered in the relative position of the SHA or HA.

§ 645.105 Definitions.

For the purposes of this regulation, the following definitions shall apply:

(a) *Authorization*—for Federal-aid projects authorization to the SHA by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

(b) *Betterment*—any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

(c) *Cost of relocation*—the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

(d) *Cost of Removal*—the amount expended to remove utility property including the cost of demolishing, dis-

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mantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

(e) *Cost of salvage*—the amount expended to restore salvaged utility property to usable condition after its removal.

(f) *Direct Federal projects*—highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the FHWA.

(g) *Highway agency* (HA)—that department, commission, board, or official of any State or political subdivison thereof, charged by its law with the responsibility for highway administration.

(h) *Indirect or overhead costs*—those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

(i) *Relocation*—the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(j) *Salvage value*—the amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts, if retained for reuse.

(k) *State highway agency*—the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) *Use and occupancy agreement*—the document (written agreement or permit) by which the HA approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) *Utility*—a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

(n) *Work order system*—a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

§ 645.107 Eligibility.

(a) When requested by the SHA, Federal funds may participate, subject to the provisions of § 645.103(d) of this part and at the pro rata share applicable, in an amount actually paid by an HA for the costs of utility relocations. Federal funds may participate in safety corrective measures made under the provisions of § 645.107(k) of this part. Federal funds may also participate for relocations necessitated by the actual construction of highway project made under one or more of the following conditions when:

(1) The SHA certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain,

(2) The utility occupies privately or publicly owned land, including public road or street right-of-way, and the SHA certifies that the payment by the HA is made pursuant to a law authorizing such payment in conformance

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with the provisions of 23 U.S.C. 123, and/or

(3) The utility occupies publicy owned land, including public road and street right-of-way, and is owned by a public agency or political subdivision of the State, and is not required by law or agreement to move at its own expense, and the SHA certifies that the HA has the legal authority or obligation to make such payments.

(b) On projects which the SHA has the authority to participate in project costs, Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities, other than those proposed under the provisions of § 645.107(k) of this part, when State law prohibits the SHA from making payment for relocation of utility facilities.

(c) On projects which the SHA does not have the authority to participate in project costs, Federal funds may participate in payments made by a political subdivision for relocation of utility facilities necessitated by the actual construction of a highway project when the SHA certifies that such payment is based upon the provisions of § 645.107(a) of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the HA or for utility safety corrective measures under the provisions of § 645.107(k) of this part.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the HA, except for utilities owned by the political subdivision on projects which qualify under the provisions of § 645.107(c) of this part in which case the costs of the utility are considered to be costs of the HA.

(e) The FHWA may deny Federal fund participation in any payments made by a HA for the relocation of utility facilities when such payments do not constitute a suitable basis for Federal fund participation under the provisions of title 23 U.S.C.

(f) The rights of any public agency or political subdivision of a State under contract, franchise, or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the SHA in the absence of State law to the contrary.

(g) In lieu of the individual certifications required by § 645.107(a) and (c), the SHA may file a statement with the FHWA setting forth the conditions under which the SHA will make payments for the relocation of utility facilities. The FHWA may approve Federal fund participation in utility relocations proposed by the SHA under the conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for Federal fund participation under the provisions of 23 U.S.C. 123.

(h) Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(i) When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the HA, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this regulation, Federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.

(j) Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a

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utility after the date the work is included in an approved program and after the FHWA has authorized the SHA to proceed in accordance with 23 CFR part 630, subpart A, Federal-Aid Programs Approval and Project Authorization.

(k) Federal funds may participate in projects solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway user. Safety corrective measures should be developed in accordance with the provisions of 23 CFR 645.209(k).

(Information collection requirements in paragraph (g) were approved by the Office of Management and Budget under control number 2125-0515)

[50 FR 20345, May 15, 1985, as amended at 53 FR 24932, July 1, 1988]

§ 645.109 Preliminary engineering.

(a) As mutually agreed to by the HA and utility, and subject to the provisions of paragraph (b) of this section, preliminary engineering activities associated with utility relocation work may be done by:

(1) The HA's or utility's engineering forces;

(2) An engineering consultant selected by the HA, after consultation with the utility, the contract to be administered by the HA; or,

(3) An engineering consultant selected by the utility, with the approval of the HA, the contract to be administered by the utility.

(b) When a utility is not adequately staffed to pursue the necessary preliminary engineering and related work for the utility relocation, Federal funds may participate in the amount paid to engineers, architects, and others for required engineering and allied services provided such amounts are not based on a percentage of the cost of relocation. When Federal participation is requested by the SHA in the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements for the services. Federal funds may participate in the cost of such services performed under existing written continuing contracts when it is demonstrated that such work is performed regularly for the utility in its own work and that the costs are reasonable. Prior approval by the FHWA of consulting services is necessary, except the FHWA may forgo preaward review and/or approval of any proposed consultant contract which is not expected to exceed $10,000.

(c) The procedures in 23 CFR part 172, Administration of Negotiated Contracts, may be used as a guide for reviewing proposed consultant contracts.

§ 645.111 Right-of-way.

(a) Federal participation may be approved for the cost of replacement right-of-way provided:

(1) The utility has the right of occupancy in its existing location beause it holds the fee, an easement, or another real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project, and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the HA for highway purposes.

(b) The utility shall determine and make a written valuation of the replacement right-of-way that it acquires in order to justify amounts paid for such right-of-way. This written valuation shall be accomplished prior to negotiation for acquisition.

(c) Acquisition of replacement right-of-way by the HA on behalf of a utility or acquisition of nonoperating real property from a utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable right-of-way procedures in 23 CFR chapter I, subchapter H, Right-of-Way and Environment.

(d) When the utility has the right-of-occupancy in its existing location because it holds the fee, an easement, or another real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking of and damage to the utility's real property, including the dis-

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posal or removal of such facilities, may be considered a right-of-way transaction in accordance with provisions of the applicable right-of-way procedures in 23 CFR chapter I, subchapter H, Right-of-Way and Environment.

§ 645.113 Agreements and authorizations.

(a) On Federal-aid and direct Federal projects involving utility relocations, the utility and the HA shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When Federal participation is requested, the agreement shall incorporate this regulation by reference and designate the method to be used for performing the work (by contract or force account) and for developing relocation costs. The method proposed by the utility for developing relocation costs must be acceptable to both the HA and the FHWA. The preferred method for the development of relocation costs by a utility is on the basis of actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(b) When applicable, the written agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility to the HA in connection with payments by the HA to the utility under the provisions of § 645.107 of this regulation.

(c) The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the HA and the FHWA with a clear description of the work required.

(d) When the relocation involves both work to be done at the HA's expense and work to be done at the expense of the utility, the written agreement shall state the share to be borne by each party.

(e) In the event there are changes in the scope of work, extra work or major changes in the planned work covered by the approved agreement, plans, and estimates, Federal participation shall be limited to costs covered by a modification of the agreement, a written change, or extra work order approved by the HA and the FHWA.

(f) When the estimated cost to the HA of proposed utility relocation work on a project for a specific utility company is $25,000 or less, the FHWA may approve an agreement between the HA and the utility for a lump-sum payment without later confirmation by audit of actual costs. Lump-sum agreements in excess of $25,000 may be approved when the FHWA finds that this method of developing costs would be in the best interest of the public.

(g) Except as otherwise provided by § 645.113(h), authorization by the FHWA to the SHA to proceed with the physical relocation of a utility's facilities may be given after:

(1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved program,

(2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR part 771, Environmental Impact and Related Procedures, have been satisfied.

(3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.

(h) The FHWA may authorize the physical relocation of utility facilities before the requirements of § 645.113(g)(2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of § 645.107(i) of this regulation.

(i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR part 712, the Acquisition Functions, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.

(j) When all efforts by the HA and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the SHA shall submit its proposal and a full report of the circumstances to the FHWA. Conditional

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authorizations for the relocation work to proceed may be given by the FHWA to the SHA with the understanding that Federal funds will not be paid for work done by the utility until the SHA proposal has been approved by the FHWA.

(k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

§ 645.115 Construction.

(a) Part 635, subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

(1) A contract awarded by the HA or utility to the lowest qualified bidder based on appropriate solicitation,

(2) Inclusion as part of the HA's highway construction contract let by the HA as agreed to by the utility,

(3) An existing continuing contract, provided the costs are reasonable, or

(4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the HA or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under part 635, subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in § 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the HA. The special provisions of contracts let by the utility or the HA shall be explicit in this respect. The costs of force account work performed for the utility by the HA and of contract work performed for the utility under a contract let by the HA shall be reported separately from the costs of other force account and contract items on the highway project.

§ 645.117 Cost development and reimbursement.

(a) *Developing and recording costs.* (1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the HA and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

(b) *Direct labor costs.* (1) Salaries and wages, at actual or average rates, and related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

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(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

(2) When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

(d) *Overhead and indirect construction costs.* (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, and actually incurred by the utility.

(2) Costs not eligible for Federal reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying, and research programs.

(3) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and are subject to audit by representatives of the State and Federal Government.

(e) *Material and supply costs.* (1) Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:

(i) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.

(ii) Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.

(iii) A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

(iv) The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.

(2) Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a considertion for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return

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to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the HA or utility following an opportunity for HA inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

(3) Federal participation may be approved for the total cost of removal when either such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway constructor elects to remove and recover the materials, Federal funds shall not participate in removal costs which exceed the value of the materials recovered.

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates which are representative of actual costs may be used if approved by the SHA and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

(f) *Equipment costs.* The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (f) (1) and (2) of this section are impractical due to project location or schedule.

(g) *Transportation costs.* (1) The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

(2) Reasonable cost for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

(h) *Credits.* (1) Credit to the highway project will be required for the cost of any betterments to the facility being replaced or adjusted, and for the salvage value of the materials removed.

(2) Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.

(3) No betterment credit is required for additions or improvements which are:

(i) Required by the highway project,

(ii) Replacement devices or materials that are of equivalent standards although not identical,

(iii) Replacement of devices or materials no longer regularly manufactured with next highest grade or size,

(iv) Required by law under governmental and appropriate regulatory commission code, or

(v) Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

(4) When the facilities, including equipment and operating facilities, described in § 645.117(h)(2) are not being replaced, but are being rehabilitated and/or moved, as necessitated by the

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highway project, no credit for accrued depreciation is needed.

(5) In no event will the total of all credits required under the provisions of this regulation exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by the highway construction.

(i) *Billings.* (1) After the executed HA/utility agreement has been approved by the FHWA, the utility may be reimbursed through the SHA by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed HA/utility agreement.

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lumpsum, at the earliest practicable date. The final billing to the FHWA shall include a certification by the SHA that the work is complete, acceptable, and in accordance with the terms of the agreement.

(3) All utility cost records and accounts relating to the project are subject to audit by representatives of the State and Federal Government for a period of 3 years from the date final payment has been received by the utility.

(4) Reimbursement for a final utility billing shall not be approved until the HA furnishes evidence that it has paid the utility from its own funds.

(Information collection requirements in paragraph (i) were approved by the Office of Management and Budget under control number 2125-0159)

§ 645.119 Alternate procedure.

(a) This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of this regulation. Under this procedure, except as otherwise provided in paragraph (b) of this section, the SHA is to act in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this regulation as prerequisites for authorizing the utility to proceed with and complete the work.

(b) The scope of the SHA's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this regulation except in the following instances:

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations and reservoirs.

(2) Utility relocations falling within the scope of § 645.113 (h), (i), and (j), and § 645.107(i) of this regulation.

(c) Each SHA is encouraged to adopt the alternate procedure and file a formal application for approval by the FHWA. The application must include the following:

(1) The SHA's written policies and procedures for administering and processing Federal-aid utility adjustments. Those policies and procedures must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this regulation, except as otherwise provided by § 645.119(b), and the provisions of 23 CFR part 645, subpart B, Accommodation of Utilities.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early scheduling of utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering review and coordination procedures as needed to establish the legal basis of the HA's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under § 645.103(d) of this regulation; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and the uniform treatment of all utility matters and actions, consistent with sound management practices.

(iv) Documentation of actions taken in compliance with SHA policies and the provisions of this regulation, shall be retained by the SHA.

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(2) A statement signed by the chief administrative officer of the SHA certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this regulation, and the SHA's utility policies and procedures submitted under § 645.119(c)(1).

(ii) Reimbursement will be requested only for those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this regulation.

(d) The SHA's application and any changes to it will be submitted to the FHWA for review and approval.

(e) After the alternate procedure has been approved, the FHWA may authorize the SHA to proceed with utility relocation on a project in accordance with the certification, subject to the following conditions:

(1) The utility work must be included in an approved program.

(2) The SHA must submit a request in writing for such authorization. The request shall include a list of the utility relocations to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The FHWA may suspend approval of the alternate procedure when any FHWA review discloses noncompliance with the certification. Federal funds will not participate in relocation costs incurred that do not comply with the requirements under § 645.119(c)(1).

(Information collection requirements in paragraph (c) were approved by the Office of Management and Budget under control number 2125-0533)

Subpart B—Accommodation of Utilities

SOURCE: 50 FR 20354, May 15, 1985, unless otherwise noted.

§ 645.201 Purpose.

To prescribe policies and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid or direct Federal highway projects.

§ 645.203 Applicability.

This subpart applies to:

(a) New utility installations within the right-of-way of Federal-aid or direct Federal highway projects,

(b) Existing utility facilities which are to be retained, relocated, or adjusted within the right-of-way of active projects under development or construction when Federal-aid or direct Federal highway funds are either being or have been used on the involved highway facility. When existing utility installations are to remain in place without adjustments on such projects the highway agency and utility are to enter into an appropriate agreement as discussed in § 645.213 of this part,

(c) Existing utility facilities which are to be adjusted or relocated under the provisions of § 645.209(k), and

(d) Private lines which may be permitted to cross the right-of-way of a Federal-aid or direct Federal highway project pursuant to State law and regulations and the provisions of this subpart. Longitudinal use of such right-of-way by private lines is to be handled under the provisions of 23 CFR 1.23(c).

§ 645.205 Policy.

(a) Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated on the right-of-way of a Federal-aid or direct Federal highway project when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations.

(b) Since by tradition and practice highway and utility facilities frequently coexist within common right-of-way or along the same transportation corridors, it is essential in such situations that these public service facilities be compatibly designed and operated. In the design of new highway facilities consideration should be given to utility service needs of the area traversed if such service is to be provided from utility facilities on or near the highway. Similarly the potential impact on

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the highway and its users should be considered in the design and location of utility facilities on or along highway right-of-way. Efficient, effective and safe joint highway and utility development of transportation corridors is important along high speed and high volume roads, such as major arterials and freeways, particularly those approaching metropolitan areas where space is increasingly limited. Joint highway and utility planning and development efforts are encouraged on Federal-aid highway projects.

(c) The manner is which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such use and occupancy, where authorized, be regulated by highway agencies in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility. This subpart shall not be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by highway agencies with respect to location and manner of installation.

(d) When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.

[50 FR 20354, May 15, 1985, as amended at 53 FR 2833, Feb. 2, 1988]

§ 645.207 Definitions.

For the purpose of this regulation, the following definitions shall apply:

(a) *Aesthetic quality*—those desirable characteristics in the appearance of the highway and its environment, such as harmony between or blending of natural and manufactured objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

(b) *Clear recovery area*—that portion of the roadside, within the highway right-of-way as established by the highway agency, free of nontraversable hazards and fixed objects. The purpose of such areas is to provide drivers of errant vehicles which leave the traveled portion of the roadway a reasonable opportunity to stop safely or otherwise regain control of the vehicle. The clear recovery area may vary with the type of highway, terrain traversed, and road geometric and operating conditions. The American Association of State Highway and Transportation Officials (AASHTO) "Roadside Design Guide," 1989, should be used as a guide for establishing clear recovery areas for various types of highways and operating conditions. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

(c) *Clear roadside policy*—that policy employed by a highway agency to provide a clear recovery area in order to increase safety, improve traffic operations, and enhance the aesthetic quality of highways by designing, constructing and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from natural or manufactured hazards such as trees, drainage structures, nonyielding sign supports, highway lighting supports, and utility poles and other ground-mounted structures. The policy should address the removal of roadside obstacles which are likely to be associated with accident or injury to the highway user, or when such obstacles are essential, the policy should provide for appropriate countermeasures to reduce hazards. Countermeasures include placing utility facilities at locations which protect out-of-control vehicles, using breakaway features, using impact attenuation devices, or shielding. In all cases full consideration

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shall be given to sound engineering principles and economic factors.

(d) *Direct Federal highway projects*—those active or completed highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the Federal Highway Administration (FHWA)

(e) *Federal-aid highway projects*—those active or completed highway projects administered by or through a State highway agency which involve or have involved the use of Federal-aid highway funds for the development, acquisition of right-of-way, construction or improvement of the highway or related facilities, including highway beautification projects under 23 U.S.C. 319, Landscaping and Scenic Enhancement.

(f) *Freeway*—a divided arterial highway with full control of access.

(g) *Highway agency*—that department, agency, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

(h) *Highway*—any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved in whole or in part with Federal-aid or direct Federal highway funds.

(i) *Private lines*—privately owned facilities which convey or transmit the commodities outlined in paragraph (m) of this section, but devoted exclusively to private use.

(j) *Right-of-way*—real property, or interests therein, acquired, dedicated or reserved for the construction, operation, and maintenance of a highway in which Federal-aid or direct Federal highway funds are or have been involved in any stage of development. Lands acquired under 23 U.S.C. 319 shall be considered to be highway right-of-way.

(k) *State highway agency*—the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) *Use and occupancy agreement*—the document (written agreement or permit) by which the highway agency approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) *Utility facility*—privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

[50 FR 20345, May 15, 1985, as amended at 51 FR 16834, May 7, 1986; 53 FR 2833, Feb. 2, 1988; 55 FR 25828, June 25, 1990]

§ 645.209 General requirements.

(a) *Safety.* Highway safety and traffic safety are of paramount, but not of sole, importance when accommodating utility facilities within highway right-of-way. Utilities provide an essential public service to the general public. Traditionally, as a matter of sound economic public policy and law, utilities have used public road right-of-way for transmitting and distributing their services. However, due to the nature and volume of highway traffic, the effect of such joint use on the traveling public must be carefully considered by highway agencies before approval of utility use of the right-of-way of Federal-aid or direct Federal highway projects is given. Adjustments in the operating characteristics of the utility or the highway or other special efforts may be necessary to increase the compatibility of utility-highway joint use. The possibility of this joint use should be a consideration in establishing right-of-way requirements for highway projects. In any event, the design, location, and

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manner in which utilities use and occupy the right-of-way of Federal-aid or direct Federal highway projects must conform to the clear roadside policies for the highway involved and otherwise provide for a safe traveling environment as required by 23 U.S.C. 109(l)(1).

(b) *New above ground installations.* On Federal-aid or direct Federal highway projects, new above ground utility installations, where permitted, shall be located as far from the traveled way as possible, preferably along the right-of-way line. No new above ground utility installations are to be allowed within the established clear recovery of the highway unless a determination has been made by the highway agency that placement underground is not technically feasible or is unreasonably costly and there are no feasible alternate locations. In exceptional situations when it is essential to locate such above ground utility facilities within the established clear recovery area of the highway, appropriate countermeasures to reduce hazards shall be used. Countermeasures include placing utility facilities at locations which protect or minimize exposure to out-of-control vehicles, using breakaway features, using impact attenuation devices, using delineation, or shielding.

(c) *Installations within freeways.* (1) Each State highway agency shall submit an accommodation plan in accordance with §§ 645.211 and 645.215 which addresses how the State highway agency will consider applications for longitudinal utility installations within the access control lines of a freeway. This includes utility installations within interchange areas which must be constructed or serviced by direct access from the main lanes or ramps. If a State highway agency elects to permit such use, the plan must address how the State highway agency will oversee such use consistent with this subpart, Title 23 U.S.C., and the safe and efficient use of the highways.

(2) Any accommodation plan shall assure that installations satisfy the following criteria:

(i) The effects utility installations will have on highway and traffic safety will be ascertained, since in no case shall any use be permitted which would adversely affect safety.

(ii) The direct and indirect environmental and economic effects of any loss of productive agricultural land or any productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for accommodation of such utility facility will be evaluated.

(iii) These environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility will be considered.

(iv) [Reserved]

(v) A utility strip will be established along the outer edge of the right-of-way by locating a utility access control line between the proposed utility installation and the through roadway and ramps. Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line. The State or political subdivision is to retain control of the utility strip right-of-way including its use by utility facilities. Service connections to adjacent properties shall not be permitted from within the utility strip.

(3) Nothing in this part shall be construed as prohibiting a highway agency from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or for servicing such installations.

(d) *Uniform policies and procedures.* For a highway agency to fulfill its responsibilities to control utility use of Federal-aid highway right-of-way within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

(e) *Private lines.* Because there are circumstances when private lines may be allowed to cross or otherwise occupy the right-of-way of Federal-aid

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projects, highway agencies shall establish uniform policies for properly controlling such permitted use. When permitted, private lines must conform to the provisions of this part and the provisions of 23 CFR 1.23(c) for longitudinal installations.

(f) *Direct Federal highway projects.* On direct Federal highway projects, the FHWA will apply, or cause to be applied, utility and private line accommodation policies similar to those required on Federal-aid highway projects. When appropriate, agreements will be entered into between the FHWA and the highway agency or other government agencies to ensure adequate control and regulation of use by utilities and private lines of the right-of-way on direct Federal highway projects.

(g) *Projects where state lacks authority.* On Federal-aid highway projects where the State highway agency does not have legal authority to regulate highway use by utilities and private lines, the State highway agency must enter into formal agreements with those local officials who have such authority. The agreements must provide for a degree of protection to the highway at least equal to the protection provided by the State highway agency's utility accommodation policy approved under the provisions of § 645.215(b) of this part. The project agreement between the State highway agency and the FHWA on all such Federal-aid highway projects shall contain a special provision incorporating the formal agreements with the responsible local officials.

(h) *Scenic areas.* New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public park and recreational lands, wildlife and waterfowl refuges, historic sites as described in 23 U.S.C. 138, scenic strips, overlooks, rest areas and landscaped areas. The State highway agency may permit exceptions provided the following conditions are met:

(1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

(2) Aerial installations may be permitted only when:

(i) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality,

(ii) placement underground is not technically feasible or is unreasonably costly, and

(iii) the proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

(3) For new utility installations within freeways, the provisions of paragraph (c) of this section must also be satisfied.

(i) *Joint use agreements.* When the utility has a compensable interest in the land occupied by its facilities and such land is to be jointly occupied and used for highway and utility purposes, the highway agency and utility shall agree in writing as to the obligations and responsibilities of each party. Such joint-use agreements shall incorporate the conditions of occupancy for each party, including the rights vested in the highway agency and the rights and privileges retained by the utility. In any event, the interest to be acquired by or vested in the highway agency in any portion of the right-of-way of a Federal-aid or direct Federal highway project to be vacated, used or occupied by utilities or private lines, shall be adequate for the construction, safe operation, and maintenance of the highway project.

(j) *Traffic control plan.* Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic

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control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility work force in accordance with procedures established by the highway agency. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD) and 23 CFR part 630, subpart J. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D.)

(k) *Corrective measures.* When the highway agency determines that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the highway agency shall initiate or cause to be initiated in consultation with the affected utilities, corrective measures to provide for a safer traffic environment. The corrective measures may include changes to utility or highway facilities and should be prioritized to maximum safety benefits in the most cost-effective manner. The scheduling of utility safety improvements should take into consideration planned utility replacement or upgrading schedules, accident potential, and the availability of resources. It is expected that the requirements of this paragraph will result in an orderly and positive process to address the identified utility hazard problems in a timely and reasonable manner with due regard to the effect of the corrective measures on both the utility consumer and the road user. The type of corrective measures are not prescribed. Any requests received involving Federal participation in the cost of adjusting or relocating utility facilities pursuant to this paragrpah shall be subject to the provisions of 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 924, Highway Safety Improvement Program.

(l) *Wetlands.* The installation of privately owned lines or conduits on the right-of-way of Federal-aid or direct Federal highway projects for the purpose of draining adjacent wetlands onto the highway right-of-way is considered to be inconsistent with Executive Order 11990, Protection of Wetlands, dated May 24, 1977, and shall be prohibited.

[50 FR 20354, May 15, 1985, as amended at 53 FR 2833, Feb. 2, 1988]

§ 645.211 State highway agency accommodation policies.

The FHWA shall use the AASHTO publication, "A Guide for Accommodating Utilities Within Highway Right-of-Way," 1981, and should use the AASHTO "Roadside Design Guide," 1989, to assist in the evaluation of adequacy of State highway agency utility accommodation policies. The "Guide for Accommodating Utilities" is incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is on file at the Office of the Federal Register in Washington, DC. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001. As a minimum, such policies shall make adequate provisions with respect to the following:

(a) Utilities must be accommodated and maintained in a manner which will not impair the highway or adversely affect highway or traffic safety. Uniform procedures controlling the manner, nature and extent of such utility use shall be established.

(b) Consideration shall be given to the effect of utility installations in regard to safety, aesthetic quality, and the costs or difficulty of highway and utility construction and maintenance.

(c) The State highway agency's standards for regulating the use and occupancy of highway right-of-way by

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utilities must include, but are not limited to, the following:

(1) The horizontal and vertical location requirements and clearances for the various types of utilities must be clearly stated. These must be adequate to ensure compliance with the clear roadside policies for the particular highway involved.

(2) The applicable provisions of government or industry codes required by law or regulation must be set forth or appropriately referenced, including highway design standards or other measures which the State highway agency deems necessary to provide adequate protection to the highway, its safe operation, aesthetic quality, and maintenance.

(3) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features and vegetation on the right-of-way; and limitations on the utility's activities within the right-of-way including installation within areas set forth by § 645.209(h) of this part should be prescribed as necessary to protect highway interests.

(4) Measures necessary to protect traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring traffic, traffic control measures to be employed, procedures for utility traffic control plans, limitations on vehicle parking and materials storage, protection of open excavations, and the like must be provided.

(5) A State highway agency may deny a utility's request to occupy highway right-of-way based on State law, regulation, or ordinances or the State highway agency's policy. However, in any case where the provisions of this part are to be cited as the basis for disapproving a utility's request to use and occupy highway right-of-way, measures must be provided to evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land that would result from the disapproval. The environmental and economic effects on productive agricultural land together with the possible interference with or impairment of the use of the highway and the effect on highway safety must be considered in the decision to disapprove any proposal by a utility to use such highway right-of-way.

(d) Compliance with applicable State laws and approved State highway agency utility accommodation policies must be assured. The responsible State highway agency's file must contain evidence of the written arrangements which set forth the terms under which utility facilities are to cross or otherwise occupy highway right-of-way. All utility installations made on highway right-of-way shall be subject to written approval by the State highway agency. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as utility facility maintenance, installation of service connections on highways other than freeways, or emergency operations.

(e) The State highway agency shall set forth in its utility accommodation plan detailed procedures, criteria, and standards it will use to evaluate and approve individual applications of utilities on freeways under the provisions of § 645.209(c) of this part. The State highway agency also may develop such procedures, criteria and standards by class of utility. In defining utility classes, consideration may be given to distinguishing utility services by type, nature or function and their potential impact on the highway and its user.

(f) The means and authority for enforcing the control of access restrictions applicable to utility use of controlled access highway facilities should be clearly set forth in the State highway agency plan.

(Information collection requirements in paragraphs (a), (b) and (c) were approved under control number 2125-0522, and paragraph (d) under control number 2125-0514)

[50 FR 20354, May 15, 1985, as amended at 53 FR 2834, Feb. 2, 1988; 55 FR 25828, June 25, 1990]

§ 645.213 Use and occupancy agreements (permits).

The written arrangements, generally in the form of use and occupancy agreements setting forth the terms

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under which the utility is to cross or otherwise occupy the highway right-of-way, must include or incorporate by reference:

(a) The highway agency standards for accommodating utilities. Since all of the standards will not be applicable to each individual utility installation, the use and occupancy agreement must, as a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restriction, and any special conditions applicable to each installation.

(b) A general description of the size, type, nature, and extent of the utility facilities being located within the highway right-of-way.

(c) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway right-of-way with respect to the existing and/or planned highway improvements, the traveled way, the right-of-way lines and, where applicable, the control of access lines and approved access points.

(d) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.

(e) The action to be taken in case of noncompliance with the highway agency's requirements.

(f) Other provisions as deemed necessary to comply with laws and regulations.

(Approved by the Office of Management and Budget under control number 2125-0522)

§ 645.215 Approvals.

(a) Each State highway agency shall submit a statement to the FHWA on the authority of utilities to use and occupy the right-of-way of State highways, the State highway agency's power to regulate such use, and the policies the State highway agency employs or proposes to employ for accommodating utilities within the right-of-way Federal-aid highways under its jurisdiction. Statements previously submitted and approved by the FHWA need not be resubmitted provided the statement adequately addresses the requirements of this part. When revisions are deemed necessary the changes to the previously approved statement may be submitted separately to the FHWA for approval. The State highway agency shall include similar information on the use and occupancy of such highways by private lines where permitted. The State shall identify those areas, if any, of the Federal-aid highway system within its borders where the State highway agency is without legal authority to regulate use by utilities. The statement shall address the nature of the formal agreements with local officials required by § 645.209(g) of this part. It is expected that the statements required by this part or necessary revisions to previously submitted and approved statements will be submitted to FHWA within 1 year of the effective date of this regulation.

(b) Upon determination by the FHWA that a State highway agency's policies satisfy the provisions of 23 U.S.C. 109, 111, and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation, the FHWA will approve their use on Federal-aid highway projects in that State

(c) Any changes, additions or deletions the State highway agency proposes to the approved policies are subject to FHWA approval.

(d) When a utility files a notice or makes an individual application or request to a State highway agency to use or occupy the right-of-way of a Federal-aid highway project, the State highway agency is not required to submit the matter to the FHWA for prior concurrence, except under the following circumstances:

(1) The proposed installation is not in accordance with this regulation or the State highway agency's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

(2) Longitudinal installations of private lines.

(e) The State highway agency's practices under the policies or agreements approved under § 645.215(b) of this part shall be periodically reviewed by the FHWA.

(Information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 2125-0514)

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[50 FR 20354, May 15, 1985, as amended at 53 FR 2834, Feb. 2, 1988]

PART 646—RAILROADS

Subpart A—Railroad-Highway Insurance Protection

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APPENDIX TO SUBPART B—HORIZONTAL AND VERTICAL CLEARANCE PROVISIONS FOR OVERPASS AND UNDERPASS STRUCTURES

AUTHORITY: 23 U.S.C. 109(e), 120(d), 130, and 315; 49 CFR 1.48(b).

Subpart A—Railroad-Highway Insurance Protection

SOURCE: 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

§ 646.101 Purpose.

The purpose of this part is to prescribe provisions under which Federal funds may be applied to the costs of public liability and property damage insurance obtained by contractors (a) for their own operations, and (b) on behalf of railroads on or about whose right-of-way the contractors are required to work in the construction of highway projects financed in whole or in part with Federal funds.

§ 646.103 Application.

(a) This part applies:

(1) To a contractors' legal liability for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(2) To the liability which may attach to railroads for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(3) To damage to property owned by or in the care, custody or control of the railroads, both as such liability or damage may arise out of the contractor's operations, or may result from work performed by railroads at or about railroad rights-of-way in connection with projects financed in whole or in part with Federal funds.

(b) Where the highway construction is under the direct supervision of the Federal Highway Administration (FHWA), all references herein to the State shall be considered as references to the FHWA.

§ 646.105 Contractor's public liability and property damage insurance.

(a) Contractors may be subject to liability with respect to bodily injury to or death of persons, and injury to, or destruction of property, which may be suffered by persons other than their own employees as a result of their operations in connection with construction of highway projects located in whole or in part within railroad right-of-way and financed in whole or in part with Federal funds. Protection to cover such liability of contractors shall be furnished under regular contractors' public liability and property damage insurance policies issued in the names of the contractors. Such policies shall be so written as to furnish protection to contractors respecting their operations in performing work covered by their contract.

(b) Where a contractor sublets a part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in his own behalf under contractor's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of, persons and injury to, or destruction of, property as a result of work undertaken by such subcontractors. In addition, the contractor shall provide for and on behalf of any such

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subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual contractor's public liability and property damage policies; or, in the alternative, each subcontractor shall provide satisfactory insurance on his own behalf to cover his individual operations.

(c) The contractor shall furnish to the State highway department evidence satisfactory to such department and to the FHWA that the insurance coverages required herein have been provided. The contractor shall also furnish a copy of such evidence to the railroad or railroads involved. The insurance specified shall be kept in force until all work required to be performed shall have been satisfactorily completed and accepted in accordance with the contract under which the construction work is undertaken.

§ 646.107 Railroad protective insurance.

In connection with highway projects for the elimination of hazards of railroad-highway crossings and other highway construction projects located in whole or in part within railroad right-of-way, railroad protective liability insurance shall be purchased on behalf of the railroad by the contractor. The standards for railroad protective insurance established by §§ 646.109 through 646.111 shall be adhered to insofar as the insurance laws of the State will permit.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

§ 646.109 Types of coverage.

(a) Coverage shall be limited to damage suffered by the railroad on account of occurrences arising out of the work of the contractor on or about the railroad right-of-way, independent of the railroad's general supervision or control, except as noted in § 646.109(b)(4).

(b) Coverage shall include:

(1) Death of or bodily injury to passengers of the railroad and employees of the railroad not covered by State workmen's compensation laws;

(2) Personal property owned by or in the care, custody or control of the railroads;

(3) The contractor, or any of his agents or employees who suffer bodily injury or death as the result of acts of the railroad or its agents, regardless of the negligence of the railroad;

(4) Negligence of only the following classes of railroad employees:

(i) Any supervisory employee of the railroad at the job site;

(ii) Any employee of the railroad while operating, attached to, or engaged on, work trains or other railroad equipment at the job site which are assigned exclusively to the contractor; or

(iii) Any employee of the railroad not within (b)(4) (i) or (ii) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or governmental authority.

§ 646.111 Amount of coverage.

(a) The maximum dollar amounts of coverage to be reimbursed from Federal funds with respect to bodily injury, death and property damage is limited to a combined amount of $2 million per occurrence with an aggregate of $6 million applying separately to each annual period except as provided in paragraph (b) of this section.

(b) In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursable from Federal funds shall be allowed. These larger amounts will depend on circumstances and shall be written for the individual project in accordance with standard underwriting practices upon approval of the FHWA.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

Subpart B—Railroad-Highway Projects

SOURCE: 40 FR 16059, Apr. 9, 1975, unless otherwise noted.

§ 646.200 Purpose and applicability.

(a) The purpose of this subpart is to prescribe policies and procedures for advancing Federal-aid projects involving railroad facilities.

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(b) This subpart, and all references hereinafter made to *projects,* applies to Federal-aid projects involving railroad facilities, including projects for the elimination of hazards of railroad-highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.

(c) Additional instructions for projects involving the elimination of hazards of railroad-highway grade crossings pursuant to 23 U.S.C. 405 and Section 203 of the Highway Safety Act of 1973 are set forth in 23 CFR part 924.

(d) Procedures on reimbursement for projects undertaken pursuant to this subpart are set forth in 23 CFR part 140, subpart I.

(e) Procedures on insurance required of contractors working on or about railroad right-of-way are set forth in 23 CFR part 646, subpart A.

(f) Audit requirements for work undertaken pursuant to this subpart which is not accomplished under competitive bidding procedures are set forth in 23 CFR part 170.

[40 FR 16059, Apr. 9, 1975, as amended at 45 FR 20795, Mar. 31, 1980]

§ 646.202 Authority.

This subpart is issued under authority of 23 U.S.C. 109(e), 120(d), 130, 315, and 405, Section 203 of the Highway Safety Act of 1973, and 49 CFR 1.48.

§ 646.204 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Railroad* shall mean all rail carriers, publicly-owned, private, and common carriers, including line haul freight and passenger railroads, switching and terminal railroads and passenger carrying railroads such as rapid transit, commuter and street railroads.

(b) *Utility* shall mean the lines and facilities for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, water, steam, sewer and similar commodities.

(c) *Company* shall mean any railroad or utility company including any wholly owned or controlled subsidiary thereof.

(d) *'G' funds* signify those Federal-aid highway funds which, pursuant to 23 U.S.C. 120(d), may be used for projects for the elimination of hazards of railroad-highway crossings not to exceed 10 percent of Federal-aid funds apportioned in accordance with 23 U.S.C. 104.

(e) *Preliminary engineering* shall mean the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction thereunder, including locating, surveying, designing, and related work.

(f) *Construction* shall mean the actual physical construction to improve or eliminate a railroad-highway grade crossing or accomplish other railroad involved work.

(g) *A diagnostic team* means a group of knowledgeable representatives of the parties of interest in a railroad-highway crossing or a group of crossings.

(h) *Main line railroad track* means a track of a principal line of a railroad, including extensions through yards, upon which trains are operated by timetable or train order or both, or the use of which is governed by block signals or by centralized traffic control.

(i) *Passive warning devices* means those types of traffic control devices, including signs, markings and other devices, located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.

(j) *Active warning devices* means those traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.

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§ 646.206 Types of projects.

(a) Projects for the elimination of hazards, to both vehicles and pedestrians, of railroad-highway crossings may include but are not limited to:

(1) Grade crossing elimination;

(2) Reconstruction of existing grade separations; and

(3) Grade crossing improvements.

(b) Other railroad-highway projects are those which use railroad properties or involve adjustments to railroad facilities required by highway construction but do not involve the elimination of hazards of railroad-highway crossings. Also included are adjustments to facilities that are jointly owned or used by railroad and utility companies.

§ 646.208 Funding.

(a) Federal-aid funding for projects which involve the elimination of hazards of railroad-highway crossings may, at the option of the State, be provided through one of the following alternative methods, within the qualifications prescribed for each:

(1) "G" funding, as provided by 23 U.S.C. 120(d) and 130;

(2) Regular pro rata sharing as provided by 23 U.S.C. 120(a) and 120(c); and

(3) Funding authorized by 23 U.S.C. 405 and section 203 of the Highway Safety Act of 1973.

(b) The adjustment of railroad facilities which does not involve the elimination of hazards of railroad-highway crossings may be funded through regular pro rata sharing, as provided by 23 U.S.C. 120 (a) and (c).

§ 646.210 Classification of projects and railroad share of the cost.

(a) State laws requiring railroads to share in the cost of work for the elimination of hazards at railroad-highway crossings shall not apply to Federal-aid projects.

(b) Pursuant to 23 U.S.C. 130(b), and 49 CFR 1.48:

(1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.

(2) Projects for the reconstruction of existing grade separations are deemed to generally be of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs, unless the railroad has a specific contractual obligation with the State or its political subdivision to share in the costs.

(3) On projects for the elimination of existing grade crossings at which active warning devices are in place or ordered to be installed by a State regulatory agency, the railroad share of the project costs shall be 5 percent.

(4) On projects for the elimination of existing grade crossings at which active warning devices are not in place and have not been ordered installed by a State regulatory agency, or on projects which do not eliminate an existing crossing, there shall be no required railroad share of the project cost.

(c) The required railroad share of the cost under § 646.210(b)(3) shall be based on the costs for preliminary engineering, right-of-way and construction within the limits described below:

(1) Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the State highway agency.

(2) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in § 646.210(c)(1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

(3) Where a grade crossing is eliminated by railroad or highway relocation, the actual cost of the relocation project, the estimated cost of the relocation project, or the estimated cost of a structure and approaches as described in § 646.210(c)(1), whichever is less.

(d) Railroads may voluntarily contribute a greater share of project costs than is required. Also, other parties

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may voluntarily assume the railroad's share.

§ 646.212 Federal share.

(a) *General.* (1) Federal funds are not eligible to participate in costs incurred solely for the benefit of the railroad.

(2) At grade separations Federal funds are eligible to participate in costs to provide space for more tracks than are in place when the railroad establishes to the satisfaction of the State highway agency and FHWA that it has a definite demand and plans for installation of the additional tracks within a reasonable time.

(3) The Federal share of the cost of a grade separation project shall be based on the cost to provide horizontal and/or vertical clearances used by the railroad in its normal practice subject to limitations as shown in the appendix or as required by a State regulatory agency.

(b) *"G" Funds.* (1) The Federal share of the cost of a "G" funded project may be up to 100 percent of the cost of preliminary engineering and construction and 75 percent of the cost of right-of-way and property damage, except that the Federal share shall be reduced by the amount of any required railroad share of the cost.

(2) Projects for the elimination of hazards of railroad-highway crossings, either by crossing elimination, improvement, or the reconstruction of existing grade separations, as described in § 646.206(a) are eligible for "G" funding subject to the following limitations:

(i) For a new or reconstructed grade separation, the entire structure or structures and necessary highway and railroad approaches to accommodate both vehicular and pedestrian traffic.

(ii) Where another facility, such as a highway or waterway requiring a bridge structure, is located within the limits of a grade separation project, the estimated cost and limits of work for a theoretical structure and necessary approaches as in § 646.212 (b)(2)(i) without considering the presence of the waterway or other highway.

(iii) For railroad or highway relocation the actual cost of the relocation project or the estimated cost of a theoretical structure and necessary approaches to eliminate the grade crossing(s) as in § 646.212(b)(2)(i), whichever is less.

(iv) Grade crossing improvements in the vicinity of the crossing and related work, including construction or reconstruction of the approaches as necessary to provide an acceptable transition to existing or improved highway gradients and alignments, and advance warning devices.

[40 FR 16059, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982; 53 FR 32218, Aug. 24, 1988]

§ 646.214 Design.

(a) *General.* (1) Facilities that are the responsibility of the railroad for maintenance and operation shall conform to the specifications and design standards used by the railroad in its normal practice, subject to approval by the State highway agency and FHWA.

(2) Facilities that are the responsibility of the highway agency for maintenance and operation shall conform to the specifications and design standards and guides used by the highway agency in its normal practice, subject to approval by FHWA.

(b) *Grade crossing improvements.* (1) All traffic control devices proposed shall comply with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways supplemented to the extent applicable by State standards.

(2) Pursuant to 23 U.S.C. 109(e), where a railroad-highway grade crossing is located within the limits of or near the terminus of a Federal-aid highway project for construction of a new highway or improvement of the existing roadway, the crossing shall not be opened for unrestricted use by traffic or the project accepted by FHWA until adequate warning devices for the crossing are installed and functioning properly.

(3)(i) *Adequate warning devices,* under § 646.214(b)(2) or on any project where Federal-aid funds participate in the installation of the devices are to include automatic gates with

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flashing light signals when one or more of the following conditions exist:

(A) Multiple main line railroad tracks.

(B) Multiple tracks at or in the vicinity of the crossing which may be occupied by a train or locomotive so as to obscure the movement of another train approaching the crossing.

(C) High Speed train operation combined with limited sight distance at either single or multiple track crossings.

(D) A combination of high speeds and moderately high volumes of highway and railroad traffic.

(E) Either a high volume of vehicular traffic, high number of train movements, substantial numbers of schoolbuses or trucks carrying hazardous materials, unusually restricted sight distance, continuing accident occurrences, or any combination of these conditions.

(F) A diagnostic team recommends them.

(ii) In individual cases where a diagnostic team justifies that gates are not appropriate, FHWA may find that the above requirements are not applicable.

(4) For crossings where the requirements of § 646.214(b)(3) are not applicable, the type of warning device to be installed, whether the determination is made by a State regulatory agency, State highway agency, and/or the railroad, is subject to the approval of FHWA.

(c) *Grade crossing elimination.* All crossings of railroads and highways at grade shall be eliminated where there is full control of access on the highway (a freeway) regardless of the volume of railroad or highway traffic.

[40 FR 16059, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982]

§ 646.216 General procedures.

(a) *General.* Unless specifically modified herein, applicable Federal-aid procedures govern projects undertaken pursuant to this subpart.

(b) *Preliminary engineering and engineering services.* (1) As mutually agreed to by the State highway agency and railroad, and subject to the provisions of § 646.216(b)(2), preliminary engineering work on railroad-highway projects may be accomplished by one of the following methods:

(i) The State or railroad's engineering forces;

(ii) An engineering consultant selected by the State after consultation with the railroad, and with the State administering the contract; or

(iii) An engineering consultant selected by the railroad, with the approval of the State and with the railroad administering the contract.

(2) Where a railroad is not adequately staffed, Federal-aid funds may participate in the amounts paid to engineering consultants and others for required services, provided such amounts are not based on a percentage of the cost of construction, either under contracts for individual projects or under existing written continuing contracts where such work is regularly performed for the railroad in its own work under such contracts at reasonable costs.

(c) *Rights-of-way.* (1) Acquisition of right-of-way by a State highway agency on behalf of a railroad or acquisition of nonoperating real property from a railroad shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable FHWA right-of-way procedures in 23 CFR, chapter I, subchapter H. On projects for the elimination of hazards of railroad-highway crossings by the relocation of railroads, acquisition or replacement right-of-way by a railroad shall be in accordance with 42 U.S.C. 4601 *et seq.*

(2) Where buildings and other depreciable structures of the railroad (such as signal towers, passenger stations, depots, and other buildings, and equipment housings) which are integral to operation of railroad traffic are wholly or partly affected by a highway project, the costs of work necessary to functionally restore such facilities are eligible for participation. However, when replacement of such facilities is necessary, credits shall be made to the cost of the project for:

(i) Accrued depreciation, which is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost.

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(ii) Additions or improvements which provide higher quality or increased service capability of the facility and which are provided solely for the benefit of the railroad.

(iii) Actual salvage value of the material recovered from the facility being replaced. Total credits to a project shall not be required in excess of the replacement cost of the facility.

(3) Where Federal funds participate in the cost of replacement right-of-way, there will be no charge to the project for the railroad's existing right-of-way being transferred to the State highway agency except when the value of the right-of-way being taken exceeds the value of the replacement right-of-way.

(d) *State-railroad agreements.* (1) Where construction of a Federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the State highway agency and the railroad company.

(2) The written agreement between the State and the railroad shall, as a minimum include the following, where applicable:

(i) The provisions of this subpart and of 23 CFR part 140, subpart I, incorporated by reference.

(ii) A detailed statement of the work to be performed by each party.

(iii) Method of payment (either actual cost or lump sum),

(iv) For projects which are not for the elimination of hazards of railroad-highway crossings, the extent to which the railroad is obligated to move or adjust its facilities at its own expense,

(v) The railroad's share of the project cost,

(vi) An itemized estimate of the cost of the work to be performed by the railroad,

(vii) Method to be used for performing the work, either by railroad forces or by contract,

(viii) Maintenance responsibility,

(ix) Form, duration, and amounts of any needed insurance,

(x) Appropriate reference to or identification of plans and specifications,

(xi) Statements defining the conditions under which the railroad will provide or require protective services during performance of the work, the type of protective services and the method of reimbursement to the railroad, and

(xii) Provisions regarding inspection of any recovered materials.

(3) On work to be performed by the railroad with its own forces and where the State highway agency and railroad agree, subject to approval by FHWA, an agreement providing for a lump sum payment in lieu of later determination of actual costs may be used for any of the following:

(i) Installation or improvement of grade crossing warning devices and/or grade crossing surfaces, regardless of cost, or

(ii) Any other eligible work where the estimated cost to the State of the proposed railroad work does not exceed $25,000 or

(iii) Where FHWA finds that the circumstances are such that this method of developing costs would be in the best interest of the public.

(4) Where the lump sum method of payment is used, periodic reviews and analyses of the railroad's methods and cost data used to develop lump sum estimates will be made.

(5) Master agreements between a State and a railroad on an areawide or statewide basis may be used. These agreements would contain the specifications, regulations, and provisions required in conjunction with work performed on all projects. Supporting data for each project or group of projects must, when combined with the master agreement by reference, satisfy the provisions of § 646.216(d)(2).

(6) Official orders issued by regulatory agencies will be accepted in lieu of State-railroad agreements only where, together with supplementary written understandings between the State and the railroad, they include the items required by § 646.216(d)(2).

(7) In extraordinary cases where FHWA finds that the circumstances are such that requiring such agreement or order would not be in the best interest of the public, projects may be approved for construction with the aid of Federal funds, provided satisfactory commitments have been made with re-

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spect to construction, maintenance and the railroad share of project costs.

(e) *Authorizations.* (1) The costs of preliminary engineering, right-of-way acquisition, and construction incurred after the date each phase of the work is included in an approved program and authorized by FHWA are eligible for Federal-aid participation. Preliminary engineering and right-of-way acquisition costs which are otherwise eligible, but incurred by a railroad prior to authorization by FHWA, although not reimbursable, may be included as part of the railroad share of project cost where such a share is required.

(2) Prior to issuance of authorization by FHWA either to advertise the physical construction for bids or to proceed with force account construction for railroad work or for other construction affected by railroad work, the following must be accomplished:

(i) The plans, specifications and estimates must be approved by FHWA.

(ii) A proposed agreement between the State and railroad must be found satisfactory by FHWA. Before Federal funds may be used to reimburse the State for railroad costs the executed agreement must be approved by FHWA. However, cost for materials stockpiled at the project site or specifically purchased and delivered to the company for use on the project may be reimbursed on progress billings prior to the approval of the executed State-Railroad Agreement in accordance with 23 CFR 140.922(a) and § 646.218 of this part.

(iii) Adequate provisions must be made for any needed easements, right-of-way, temporary crossings for construction purposes or other property interests.

(iv) The pertinent portions of the State-railroad agreement applicable to any protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract.

(3) In unusual cases, pending compliance with § 646.216(e)(2)(ii), (iii) and (iv), authorization may be given by FHWA to advertise for bids for highway construction under conditions where a railroad grants a right-of-entry to its property as necessary to prosecute the physical construction.

(f) *Construction.* (1) Construction may be accomplished by:

(i) Railroad force account,

(ii) Contracting with the lowest qualified bidder based on appropriate solicitation,

(iii) Existing continuing contracts at reasonable costs, or

(iv) Contract without competitive bidding, for minor work, at reasonable costs.

(2) Reimbursement will not be made for any increased costs due to changes in plans:

(i) For the convenience of the contractor, or

(ii) Not approved by the State and FHWA.

(3) The State and FHWA shall be afforded a reasonable opportunity to inspect materials recovered by the railroad prior to disposal by sale or scrap. This requirement will be satisfied by the railroad giving written notice, or oral notice with prompt written confirmation, to the State of the time and place where the materials will be available for inspection. The giving of notice is the responsibility of the railroad, and it may be held accountable for full value of materials disposed of without notice.

(4) In addition to normal construction costs, the following construction costs are eligible for participation with Federal-aid funds when approved by the State and FHWA:

(i) The cost of maintaining temporary facilities of a railroad company required by and during the highway construction to the extent that such costs exceed the documented normal cost of maintaining the permanent facilities.

(ii) The cost of stage or extended construction involving grade corrections and/or slope stabilization for permanent tracks of a railroad which are required to be relocated on new grade by the highway construction. Stage or extended construction will be approved by FHWA only when documentation submitted by the State establishes the proposed method of construction to be the only practical method and that the cost of the extended construction within the period

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specified is estimated to be less than the cost of any practicable alternate procedure.

(iii) The cost of restoring the company's service by adustments of existing facilities away from the project site, in lieu of and not to exceed the cost of replacing, adjusting or relocating facilities at the project site.

(iv) The cost of an addition or improvement to an existing railroad facility which is required by the highway construction.

[40 FR 16059, Apr. 9, 1975, as amended at 40 FR 29712, July 15, 1975; 47 FR 33956, Aug. 5, 1982]

§ 646.218 Simplified procedure for accelerating grade crossing improvements.

(a) The procedure set forth in this section is encouraged for use in simplifying and accelerating the processing of single or multiple grade crossing improvements.

(b) Eligible preliminary engineering costs may include those incurred in selecting crossings to be improved, determining the type of improvement for each crossing, estimating the cost and preparing the required agreement.

(c) The written agreement between a State and a railroad shall contain as a minimum:

(1) Identification of each crossing location.

(2) Description of improvement and estimate of cost for each crossing location.

(3) Estimated schedule for completion of work at each location.

(d) Following programming, authorization and approval of the agreement under § 646.218(c), FHWA may authorize construction, including acquisition of warning device materials, with the condition that work at any particular location will not be undertaken until the proposed or executed State-railroad agreement under § 646.216(d)(2) is found satisfactory by FHWA and the final plans, specifications, and estimates are approved and with the condition that only material actually incorporated into the project will be eligible for Federal participation.

(e) Work programmed and authorized under this simplified procedure should include only that which can reasonably be expected to reach the construction stage within one year and be completed within two years after the initial authorization date.

§ 646.220 Alternate Federal-State procedure.

(a) On other than Interstate projects, an alternate procedure may be used, at the election of the State, for processing certain types of railroad-highway work. Under this procedure, the State highway agency will act in the relative position of FHWA for reviewing and approving projects.

(b) The scope of the State's approval authority under the alternate procedure includes all actions necessary to advance and complete the following types of railroad-highway work:

(1) All types of grade crossing improvements under § 646.206(a)(3).

(2) Minor adjustments to railroad facilities under § 646.206(b).

(c) The following types of work are to be reviewed and approved in the normal manner, as prescribed elsewhere in this subpart.

(1) All projects under § 646.206(a)(1) and (2).

(2) Major adjustments to railroad facilities under § 646.206(b).

(d) Any State wishing to adopt the alternate procedure may file a formal application for approval by FHWA. The application must include the following:

(1) The State's written policies and procedures for administering and processing Federal-aid railroad-highway work, which make adequate provisions with respect to all of the following:

(i) Compliance with the provisions of title 23 U.S.C., title 23 CFR, and other applicable Federal laws and Executive Orders.

(ii) Compliance with this subpart and 23 CFR part 140, subpart I and 23 CFR part 172.

(iii) For grade crossing safety improvements, compliance with the requirements of 23 CFR part 924.

(2) A statement signed by the Chief Administrative Officer of the State highway agency certifying that:

(i) The work will be done in accordance with the applicable provisions of

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the State's policies and procedures submitted under § 646.220(d)(1), and

(ii) Reimbursement will be requested in only those costs properly attributable to the highway construction and eligible for Federal fund participation.

(e) When FHWA has approved the alternate procedure, it may authorize the State to proceed in accordance with the State's certification, subject to the following conditions:

(1) The work has been programmed.

(2) The State submits in writing a request for such authorization which shall include a list of the improvements or adjustments to be processed under the alternate procedure, along with the best available estimate of cost.

(f) The FHWA Regional Administrator may suspend approval of the certified procedure, where FHWA reviews disclose noncompliance with the certification. Federal-aid funds will not be eligible to participate in costs that do not qualify under § 646.220(d)(1).

[40 FR 16059, Apr. 9, 1975; 40 FR 29712, July 15, 1975; 40 FR 31211, July 25, 1975; 42 FR 30835, June 17, 1977, as amended at 45 FR 20795, Mar. 31, 1980]

Appendix to Subpart B—Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures

The following implements provisions of 23 CFR 646.212(a)(3).

a. *Lateral Geometrics*

A cross section with a horizontal distance of 20 feet, measured at right angles from the centerline of track at the top of rails, to the face of the embankment slope, may be approved. The 20-foot distance may be increased at individual structure locations as appropriate to provide for drainage if justified by a hydraulic analysis or to allow adequate room to accommodate special conditions, such as where heavy and drifting snow is a problem. The railroad must demonstrate that this is its normal practice to address these special conditions in the manner proposed. Additionally, this distance may also be increased up to 8 feet as may be necessary for off-track maintenance equipment, provided adequate horizontal clearance is not available in adjacent spans and where justified by the presence of an existing maintenance road or by evidence of future need for such equipment. All piers should be placed at least 9 feet horizontally from the centerline of the track and preferably beyond the drainage ditch. For multiple track facilities, all dimensions apply to the centerline of the outside track.

Any increase above the 20-foot horizontal clearance distance must be required by specific site conditions and be justified by the railroad to the satisfaction of the State highway agency (SHA) and the FHWA.

b. *Vertical Clearance*

A vertical clearance of 23 feet above the top of rails, which includes an allowance for future ballasting of the railroad tracks, may be approved. Vertical clearance greater than 23 feet may be approved when the State regulatory agency having jurisdiction over such matters requires a vertical clearance in excess of 23 feet or on a site by site basis where justified by the railroad to the satisfaction of the SHA and the FHWA. A railroad's justification for increased vertical clearance should be based on an analysis of engineering, operational and/or economic conditions at a specific structure location.

Federal-aid highway funds are also eligible to participate in the cost of providing vertical clearance greater than 23 feet where a railroad establishes to the satisfaction of a SHA and the FHWA that it has a definite formal plan for electrification of its rail system where the proposed grade separation project is located. The plan must cover a logical independent segment of the rail system and be approved by the railroad's corporate headquarters. For 25 kv line, a vertical clearance of 24 feet 3 inches may be approved. For 50 kv line, a vertical clearance of 26 feet may be approved.

A railroad's justification to support its plan for electrification shall include maps and plans or drawings showing those lines to be electrified; actions taken by its corporate headquarters committing it to electrification including a proposed schedule; and actions initiated or completed to date implementing its electrification plan such as a showing of the amounts of funds and identification of structures, if any, where the railroad has expended its own funds to provide added clearance for the proposed electrification. If available, the railroad's justification should include information on its contemplated treatment of existing grade separations along the section of its rail system proposed for electrification.

The cost of reconstructing or modifying any existing railroad-highway grade separation structures solely to accommodate electrification will not be eligible for Federal-aid highway fund participation.

c. *Railroad Structure Width*

Nine feet of structure width outside of the centerline of the outside tracks may be approved for a structure carrying railroad tracks. Greater structure width may be approved when in accordance with standards

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established and used by the affected railroad in its normal practice.

In order to maintain continuity of off-track equipment roadways at structures carrying tracks over limited access highways, consideration should be given at the preliminary design stage to the feasibility of using public road crossings for this purpose. Where not feasible, an additional structure width of 8 feet may be approved if designed for off-track equipment only.

[53 FR 32218, Aug. 24, 1988]

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

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AUTHORITY: 23 U.S.C. 109 (a) and (h), 144, 151, 351, and 319; 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988—Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); sec. 161 of Pub. L. 97-424, 96 Stat. 2097, 3135; Pub. L. 97-134, 95 Stat. 1699; and 33 U.S.C. 401 491 *et seq.*, 511 *et seq.*

Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains

SOURCE: 44 FR 67580, Nov. 26, 1979, unless otherwise noted.

§ 650.101 Purpose.

To prescribe Federal Highway Administration (FHWA) policies and procedures for the location and hydraulic design of highway encroachments on

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flood plains, including direct Federal highway projects administered by the FHWA.

§ 650.103 Policy.

It is the policy of the FHWA:

(a) To encourage a broad and unified effort to prevent uneconomic, hazardous or incompatible use and development of the Nation's flood plains,

(b) To avoid longitudinal encroachments, where practicable,

(c) To avoid significant encroachments, where practicable,

(d) To minimize impacts of highway agency actions which adversely affect base flood plains,

(e) To restore and preserve the natural and beneficial flood-plain values that are adversely impacted by highway agency actions,

(f) To avoid support of incompatible flood-plain development,

(g) To be consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate, and

(h) To incorporate "A Unified National Program for Floodplain Management" of the Water Resources Council into FHWA procedures.

§ 650.105 Definitions.

(a) *Action* shall mean any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with Federal or Federal-aid highway funds or FHWA approval.

(b) *Base flood* shall mean the flood or tide having a 1-percent chance of being exceeded in any given year.

(c) *Base flood plain* shall mean the area subject to flooding by the base flood.

(d) *Design Flood* shall mean the peak discharge, volume if appropriate, stage or wave crest elevation of the flood associated with the probability of exceedance selected for the design of a highway encroachment. By definition, the highway will not be inundated from the stage of the design flood.

(e) *Encroachment* shall mean an action within the limits of the base flood plain.

(f) *Floodproof* shall mean to design and construct individual buildings, facilities, and their sites to protect against structural failure, to keep water out or to reduce the effects of water entry.

(g) *Freeboard* shall mean the vertical clearance of the lowest structural member of the bridge superstructure above the water surface elevation of the overtopping flood.

(h) *Minimize* shall mean to reduce to the smallest practicable amount or degree.

(i) *Natural and beneficial floodplain values* shall include but are not limited to fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance, and groundwater recharge.

(j) *Overtopping flood* shall mean the flood described by the probability of exceedance and water surface elevation at which flow occurs over the highway, over the watershed divide, or through structure(s) provided for emergency relief.

(k) *Practicable* shall mean capable of being done within reasonable natural, social, or economic constraints.

(l) *Preserve* shall mean to avoid modification to the functions of the natural flood-plain environment or to maintain it as closely as practicable in its natural state.

(m) *Regulatory floodway* shall mean the flood-plain area that is reserved in an open manner by Federal, State or local requirements, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so that the cumulative increase in water surface elevation is no more than a designated amount (not to exceed 1 foot as established by the Federal Emergency Management Agency (FEMA) for administering the National Flood Insurance Program).

(n) *Restore* shall mean to reestablish a setting or environment in which the functions of the natural and beneficial flood-plain values adversely impacted by the highway agency action can again operate.

(o) *Risk* shall mean the consequences associated with the probability of flooding attributable to an encroachment. It shall include the potential for property loss and hazard to life during the service life of the highway.

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(p) *Risk analysis* shall mean an economic comparison of design alternatives using expected total costs (construction costs plus risk costs) to determine the alternative with the least total expected cost to the public. It shall include probable flood-related costs during the service life of the facility for highway operation, maintenance, and repair, for highway-aggravated flood damage to other property, and for additional or interrupted highway travel.

(q) *Significant encroachment* shall mean a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction-or flood-related impacts:

(1) A significant potential for interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route.

(2) A significant risk, or

(3) A significant adverse impact on natural and beneficial flood-plain values.

(r) *Support base flood-plain development* shall mean to encourage, allow, serve, or otherwise facilitate additional base flood-plain development. Direct support results from an encroachment, while indirect support results from an action out of the base flood plain.

§ 650.107 Applicability.

(a) The provisions of this regulation shall apply to all encroachments and to all actions which affect base flood plains, except for repairs made with emergency funds (23 CFR part 668) during or immediately following a disaster.

(b) The provisions of this regulation shall not apply to or alter approvals or authorizations which were given by FHWA pursuant to regulations or directives in effect before the effective date of this regulation.

§ 650.109 Public involvement.

Procedures which have been established to meet the public involvement requirements of 23 CFR part 771 shall be used to provide opportunity for early public review and comment on alternatives which contain encroachments.

[53 FR 11065, Apr. 5, 1988]

§ 650.111 Location hydraulic studies.

(a) National Flood Insurance Program (NFIP) maps or information developed by the highway agency, if NFIP maps are not available, shall be used to determine whether a highway location alternative will include an encroachment.

(b) Location studies shall include evaluation and discussion of the practicability of alternatives to any longitudinal encroachments.

(c) Location studies shall include discussion of the following items, commensurate with the significance of the risk or environmental impact, for all alternatives containing encroachments and for those actions which would support base flood-plain development:

(1) The risks associated with implementation of the action,

(2) The impacts on natural and beneficial flood-plain values,

(3) The support of probable incompatible flood-plain development,

(4) The measures to minimize flood-plain impacts associated with the action, and

(5) The measures to restore and preserve the natural and beneficial flood-plain values impacted by the action.

(d) Location studies shall include evaluation and discussion of the practicability of alternatives to any significant encroachments or any support of incompatible flood-plain development.

(e) The studies required by § 650.111 (c) and (d) shall be summarized in environmental review documents prepared pursuant to 23 CFR part 771.

(f) Local, State, and Federal water resources and flood-plain management agencies should be consulted to determine if the proposed highway action is consistent with existing watershed and flood-plain management programs and to obtain current information on development and proposed actions in the affected watersheds.

§ 650.113 Only practicable alternative finding.

(a) A proposed action which includes a significant encroachment shall not

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be approved unless the FHWA finds that the proposed significant encroachment is the only practicable alternative. This finding shall be included in the final environmental document (final environmental impact statement or finding of no significant impact) and shall be supported by the following information:

(1) The reasons why the proposed action must be located in the flood plain,

(2) The alternatives considered and why they were not practicable, and

(3) A statement indicating whether the action conforms to applicable State or local flood-plain protection standards.

[44 FR 67580, Nov. 26, 1979, as amended at 48 FR 29274, June 24, 1983]

§ 650.115 Design standards.

(a) The design selected for an encroachment shall be supported by analyses of design alternatives with consideration given to capital costs and risks, and to other economic, engineering, social and environmental concerns.

(1) Consideration of capital costs and risks shall include, as appropriate, a risk analysis or assessment which includes:

(i) The overtopping flood or the base flood, whichever is greater, or

(ii) The greatest flood which must flow through the highway drainage structure(s), where overtopping is not practicable. The greatest flood used in the analysis is subject to state-of-the-art capability to estimate the exceedance probability.

(2) The design flood for encroachments by through lanes of Interstate highways shall not be less than the flood with a 2-percent chance of being exceeded in any given year. No minimum design flood is specified for Interstate highway ramps and frontage roads or for other highways.

(3) Freeboard shall be provided, where practicable, to protect bridge structures from debris- and scour-related failure.

(4) The effect of existing flood control channels, levees, and reservoirs shall be considered in estimating the peak discharge and stage for all floods considered in the design.

(5) The design of encroachments shall be consistent with standards established by the FEMA, State, and local governmental agencies for the administration of the National Flood Insurance Program for:

(i) All direct Federal highway actions, unless the standards are demonstrably inappropriate, and

(ii) Federal-aid highway actions where a regulatory floodway has been designated or where studies are underway to establish a regulatory floodway.

(b) Rest area buildings and related water supply and waste treatment facilities shall be located outside the base flood plain, where practicable. Rest area buildings which are located on the base flood plain shall be flood-proofed against damage from the base flood.

(c) Where highway fills are to be used as dams to permanently impound water more than 50 acre-feet (6.17×10^4 cubic metres) in volume or 25 feet (7.6 metres) deep, the hydrologic, hydraulic, and structural design of the fill and appurtenant spillways shall have the approval of the State or Federal agency responsible for the safety of dams or like structures within the State, prior to authorization by the Division Administrator to advertise for bids for construction.

§ 650.117 Content of design studies.

(a) The detail of studies shall be commensurate with the risk associated with the encroachment and with other economic, engineering, social or environmental concerns.

(b) Studies by highway agencies shall contain:

(1) The hydrologic and hydraulic data and design computations,

(2) The analysis required by § 650.115(a), and

(3) For proposed direct Federal highway actions, the reasons, when applicable, why FEMA criteria (44 CFR 60.3, formerly 24 CFR 1910.3) are demonstrably inappropriate.

(c) For encroachment locations, project plans shall show:

(1) The magnitude, approximate probability of exceedance and, at appropriate locations, the water surface

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elevations associated with the overtopping flood or the flood of § 650.115(a)(1)(ii), and

(2) The magnitude and water surface elevation of the base flood, if larger than the overtopping flood.

Subpart B—Erosion and Sediment Control on Highway Construction Projects

SOURCE: 39 FR 36332, Oct. 9, 1974, unless otherwise noted.

§ 650.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures for the control of erosion, abatement of water pollution and prevention of damage by sediment deposition from Federal-aid highway projections and projects under the direct control of the Federal Highway Administration.

§ 650.203 Policy.

It is the policy of the Federal Highway Administration (FHWA) that Federal-aid highways and highways constructed under the direct supervision of FHWA shall be located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources.

§ 650.205 Definitions.

(a) Erosion control measures are installations used to inhibit dislodging of soil particles by water or wind.

(b) Sediment control measures are installations used to inhibit dislodging of remove settleable sediments from surface runoff.

(c) Permanent erosion and sediment control measures are installations which remain in place and in service on completion of the construction project.

(d) Temporary erosion or sediment control measures are installations used on an interim basis during construction.

(e) Pollutants are substances, including sediment, which cause deterioration of water quality when added to surface or ground waters in sufficient quantity.

§ 650.207 Plans, specifications and estimates.

(a) Emphasis shall be placed on erosion control in the preparation of plans, specifications and estimates.

(b) All reasonable steps shall be taken to insure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

§ 650.209 Construction.

(a) Permanent erosion and sediment control measures shall be installed at the earlist practicable time consistent with good construction practices.

(b) Temporary erosion and sediment control measures shall be coordinated with permanent measures to assure economical, effective and continuous control throughout the construction phase. Temporary measures shall not be constructed for expediency in lieu of permanent measures specified in the contract.

(c) Erosion and sediment control measures shall be adequately maintained to perform their intended function during construction of the project.

(d) Erosion and sediment control measures necessary because of contractor negligence, carelessness or failure to install contract measures as scheduled shall be installed at no cost to Federal-aid funds.

(e) Pollutants used during highway construction or operation and material from sediment traps shall not be stockpiled or disposed of in a manner which makes them susceptible to being washed into any watercourse by runoff or high water. No pollutants shall be deposited or disposed of in watercourses.

Subpart C—National Bridge Inspection Standards

§ 650.301 Application of standards.

The National Bridge Inspection Standards in this part apply to all structures defined as bridges located on all public roads. In acordance with the AASHTO (American Association of State Highway and Transportation

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Officials) Transportation Glossary, a *bridge* is defined as a structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

[44 FR 25435, May 1, 1979, as amended at 51 FR 16834, May 7, 1986]

§ 650.303 Inspection procedures.

(a) Each highway department shall include a bridge inspection organization capable of performing inspections, preparing reports, and determining ratings in acordance with the provisions of the AASHTO Manual [1] and the Standards contained herein.

(b) Bridge inspectors shall meet the minimum qualifications stated in § 650.307.

(c) Each structure required to be inspected under the Standards shall be rated as to its safe load carrying capacity in accordance with section 4 of the AASHTO Manual. If it is determined under this rating procedure that the maximum legal load under State law exceeds the load permitted under the Operating Rating, the bridge must be posted in conformity with the AASHTO Manual or in accordance with State law.

(d) Inspection records and bridge inventories shall be prepared and maintained in accordance with the Standards.

(e) The individual in charge of the organizational unit that has been delegated the responsibilities for bridge inspection, reporting and inventory shall determine and designate on the individual inspection and inventory records and maintain a master list of the following:

(1) Those bridges which contain fracture critical members, the location and description of such members on the bridge and the inspection frequency and procedures for inspection of such members. (Fracture critical members are tension members of a bridge whose failure will probably cause a portion of or the entire bridge to collapse.)

(2) Those bridges with underwater members which cannot be visually evaluated during periods of low flow or examined by feel for condition, integrity and safe load capacity due to excessive water depth or turbidity. These members shall be described, the inspection frequency stated, not to exceed five years, and the inspection procedure specified.

(3) Those bridges which contain unique or special features requiring additional attention during inspection to ensure the safety of such bridges and the inspection frequency and procedure for inspection of each such feature.

(4) The date of last inspection of the features designated in paragraphs (e)(1) through (3) of this section and a description of the findings and follow-up actions, if necessary, resulting from the most recent inspection of fracture critical details, underwater members or special features of each so designated bridge.

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974, and amended at 44 FR 25435, May 1, 1979; 53 FR 32616, Aug. 26, 1988]

[1] The *AASHTO Manual* referred to in this part is the *Manual for Maintenance Inspection of Bridges 1983* together with subsequent interim changes or the most recent version of the AASHTO Manual published by the American Association of State Highway and Transportation Officials. A copy of the Manual may be examined during normal business hours at the office of each Division Administrator of the Federal Highway Administration, at the office of each Regional Federal Highway Administrator, and at the Washington Headquarters of the Federal Highway Administration. The addresses of those document insepction facilities are set forth in appendix D to part 7 of the regulations of the Office of the Secretary (49 CFR part 7). In addition, a copy of the Manual may be secured upon payment in advance by writing to the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 225, Washington, DC 20001.

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§ 650.305 Frequency of inspections.

(a) Each bridge is to be inspected at regular intervals not to exceed 2 years in accordance with section 2.3 of the AASHTO Manual.

(b) Certain types or groups of bridges will require inspection at less than 2-year intervals. The depth and frequency to which bridges are to be inspected will depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The evaluation of these factors will be the responsibility of the individual in charge of the inspection program.

(c) The maximum inspection interval may be increased for certain types or groups of bridges where past inspection reports and favorable experience and analysis justifies the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified 2-year interval, the State shall submit a detailed proposal and supporting data to the Federal Highway Administrator for approval.

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974, and amended at 39 FR 29590, Aug. 16, 1974; 53 FR 32616, Aug. 26, 1988]

§ 650.307 Qualifications of personnel.

(a) The individual in charge of the organizational unit that has been delegated the responsibilities for bridge inspection, reporting, and inventory shall possess the following minimum qualifications:

(1) Be a registered professional engineer; or

(2) Be qualified for registration as a professional engineer under the laws of the State; or

(3) Have a minimum of 10 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," [2] which has been developed by a joint Federal-State task force, and subsequent additions to the manual.[3]

(b) An individual in charge of a bridge inspection team shall possess the following minimum qualifications:

(1) Have the qualifications specified in paragraph (a) of this section; or

(2) Have a minimum of 5 years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual," which has been developed by a joint Federal-State task force.

(3) Current certification as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET) [4] is an alternate acceptable means for establishing that a bridge inspection team leader is qualified.

[36 FR 7851, Apr. 27, 1971. Redesignated at 39 FR 10430, Mar. 20, 1974, and amended at 44 FR 25435, May 1, 1979; 53 FR 32616, Aug. 26, 1988]

§ 650.309 Inspection report.

The findings and results of bridge inspections shall be recorded on standard forms. The data required to complete the forms and the functions which must be performed to compile the data are contained in section 3 of the AASHTO Manual.

[39 FR 29590, Aug. 16, 1974]

§ 650.311 Inventory.

(a) Each State shall prepare and maintain an inventory of all bridge structures subject to the Standards.

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[2] The "Bridge Inspector's Training Manual" may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[3] The following publications are supplements to the "Bridge Inspector's Training Manual": "Bridge Inspector's Manual for Movable Bridges." 1977, GPO Stock No. 050-002-00103-5; "Culvert Inspector's Training Manual," July 1986, GPO Stock No. 050-001-0030-7; and "Inspection of Fracture Critical Bridge Members," 1986, GPO Stock No. 050-001-00302-3.

[4] For information on NICET program certification contact: National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, Virginia 22314, Attention: John D. Antrim, P.E., Phone (703) 684-2835.

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Under these Standards, certain structure inventory and appraisal data must be collected and retained within the various departments of the State organization for collection by the Federal Highway Administration as needed. A tabulation of this data is contained in the structure inventory and appraisal sheet distributed by the Federal Highway Administration as part of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges (Coding Guide) in January of 1979. Reporting procedures have been developed by the Federal Highway Administration.

(b) Newly completed structures, modification of existing structures which would alter previously recorded data on the inventory forms or placement of load restriction signs on the approaches to or at the structure itself shall be entered in the State's inspection reports and the computer inventory file as promptly as practical, but no later than 90 days after the change in the status of the structure for bridges directly under the State's jurisdiction and no later than 180 days after the change in status of the structure for all other bridges on public roads within the State.

[44 FR 25435, May 1, 1979, as amended at 53 FR 32617, Aug. 26, 1988] n

Subpart D—Highway Bridge Replacement and Rehabilitation Program

SOURCE: 44 FR 15665, Mar. 15, 1979, unless otherwise noted.

§ 650.401 Purpose.

The purpose of this regulation is to prescribe policies and outline procedures for administering the Highway Bridge Replacement and Rehabilitation Program in accordance with 23 U.S.C. 144.

§ 650.403 Definition of terms.

As used in this regulation:

(a) *Bridge.* A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

(b) *Sufficiency rating.* The numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

(c) *Rehabilitation.* The major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects.

§ 650.405 Eligible projects.

(a) *General.* Deficient highway bridges on all public roads may be eligible for replacement or rehabilitation.

(b) *Types of projects which are eligible.* The following types of work are eligible for participation in the Highway Bridge Replacement and Rehabilitation Program (HBRRP), hereinafter known as the bridge program.

(1) *Replacement.* Total replacement of a structurally deficient or functionally obsolete bridge with a new facility constructed in the same general traffic corridor. A nominal amount of approach work, sufficient to connect the new facility to the existing roadway or to return the gradeline to an attainable touchdown point in accordance with good design practice is also eligible. The replacement structure must meet the current geometric, construction and structural standards required for the types and volume of projected traffic on the facility over its design life.

(2) *Rehabilitation.* The project requirements necessary to perform the major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects are eligible except as noted under ineligible work. Bridges to be rehabilitated both on or off the F-A System shall, as a minimum, conform with the provisions of 23 CFR part 625, Design Standards for Federal-aid Highways, for the class of highway on which the bridge is a part.

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(c) *Ineligible work.* Except as otherwise prescribed by the Administrator, the costs of long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond the attainable touchdown point, are not eligible under the bridge program.

§ 650.407 Application for bridge replacement or rehabilitation.

(a) Agencies participate in the bridge program by conducting bridge inspections and submitting Structure Inventory and Appraisal (SI&A) sheet inspection data. Federal and local governments supply SI&A sheet data to the State agency for review and processing. The State is responsible for submitting the six computer card format or tapes containing all public road SI&A sheet bridge information through the Division Administrator of the Federal Highway Administration (FHWA) for processing. These requirements are prescribed in 23 CFR 650.309 and 650.311, the National Bridge Inspection Standards.

(b) Inventory data may be submitted as available and shall be submitted at such additional times as the FHWA may request.

(c) Inventory data on bridges that have been strengthened or repaired to eliminate deficiencies, or those that have been replaced or rehabilitated using bridge replacement and/or other funds, must be revised in the inventory through data submission.

(d) The Secretary may, at the request of a State, inventory bridges, on and off the Federal-aid system, for historic significance.

[44 FR 15665, Mar. 15, 1979, as amended at 44 FR 72112, Dec. 13, 1979]

§ 650.409 Evaluation of bridge inventory.

(a) *Sufficiency rating of bridges.* Upon receipt and evaluation of the bridge inventory, a sufficiency rating will be assigned to each bridge by the Secretary in accordance with the approved AASHTO [1] sufficiency rating formula. The sufficiency rating will be used as a basis for establishing eligibility and priority for replacement or rehabilitation of bridges; in general the lower the rating, the higher the priority.

(b) *Selection of bridges for inclusion in State program.* After evaluation of the inventory and assignment of sufficiency ratings, the Secretary will provide the State with a selection list of bridges within the State that are eligible for the bridge program. From that list or from previously furnished selection lists, the State may select bridge projects.

§ 650.411 Procedures for bridge replacement and rehabilitation projects.

(a) Consideration shall be given to projects which will remove from service highway bridges most in danger of failure.

(b) *Submission and approval of projects.* (1) Bridge replacement or rehabilitation projects shall be submitted by the State to the Secretary in accordance with 23 CFR part 630, subpart A Federal-Aid Programs, Approval and Authorization.

(2) Funds apportioned to a State shall be made available throughout each State on a fair and equitable basis.

(c)(1) Each approved project will be designed, constructed, and inspected for acceptance in the same manner as other projects on the system on which the project is located. It shall be the responsibility of the State agency to properly maintain, or cause to be properly maintained, any project constructed under this bridge program. The State highway agency shall enter into a formal agreement for maintenance with appropriate local government officials in cases where an eligible project is located within and is under the legal authority of such a local government.

(2) Whenever a deficient bridge is replaced or its deficiency alleviated by a new bridge under the bridge program, the deficient bridge shall either be dismantled or demolished or its use limited to the type and volume of traffic the structure can safely service over its remaining life. For example, if the

[1] American Association of State Highway and Transporation Officials, Suite 225, 444 North Capitol Street, NW, Washington, DC 20001.

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only deficiency of the existing structure is inadequate roadway width and the combination of the new and existing structure can be made to meet current standards for the volume of traffic the facility will carry over its design life, the existing bridge may remain in place and be incorporated into the system.

[44 FR 15665, Mar. 15, 1979, as amended at 44 FR 72112, Dec. 13, 1979]

§ 650.413 Funding.

(a) Funds authorized for carrying out the Highway Bridge Replacement and Rehabilitation Program are available for obligation at the beginning of the fiscal year for which authorized and remain available for expenditure for the same period as funds apportioned for projects on the Federal-aid primary system.

(b) The Federal share payable on account of any project carried out under 23 U.S.C. 144 shall be 80 percent of the eligible cost.

(c) Not less than 15 percent nor more than 35 percent of the apportioned funds shall be expended for projects located on public roads, other than those on a Federal-aid system. The Secretary after consultation with State and local officials may, with respect to a State, reduce the requirement for expenditure for bridges not on a Federal-aid system when he determines that such State has inadequate needs to justify such expenditure.

§ 650.415 Reports.

The Secretary must report annually to the Congress on projects approved and current inventories together with recommendations for further improvements.

Subpart E—Water Supply and Sewage Treatment at Safety Rest Areas

SOURCE: 49 FR 1486, Jan. 12, 1984, unless otherwise noted.

§ 650.501 Purpose.

The purpose of this regulation is to prescribe Federal Highway Administration (FHWA) policies and procedures for providing safe and adequate water supply and sewage treatment facilities at safety rest areas constructed with Federal-aid funds.

§ 650.503 Applicability.

The provisions of this regulation shall apply to safety rest areas constructed with Federal-aid funds with existing or proposed drinking water supply and sewage treatment facilities.

§ 650.505 Definitions.

(a) *Designated sole source aquifer*—an aquifer, as established in 40 CFR part 149 pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f, 300h-3(e), which represents the major source of a community's water supply.

(b) *Effluent limitations*—the standards governing the discharge quality of treated sewage as established by the Environmental Protection Agency (EPA) in 40 CFR part 133 pursuant to the Clean Water Act, 33 U.S.C. 1311.

(c) *Federal drinking water standards*—the standards for assessing the physical, chemical, biological, and radiological characteristics of water for drinking as established by EPA in 40 CFR part 141 pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f, which delineate the maximum permissible level of a contaminant in water provided by a public water system.

(d) *National Pollutant Discharge Elimination System (NPDES)*—the regulatory permit program that controls the quality of treated sewage discharged from sewage treatment plants as established in 40 CFR part 125 pursuant to the Clean Water Act, 33 U.S.C. 1342.

(e) *Receiving water quality standards*—the standards for maintaining or improving water quality in bodies of water and streams as set forth in the Clean Water Act, 33 U.S.C. 1313, and 40 CFR part 120—Water Quality Standards.

(f) *Safety rest area*—a roadside facility safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for rest, relaxation, comfort and information. The term is synonymous with "rest and recreation areas" as described in 23 U.S.C. 319.

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§ 650.507 Policy.

It is the policy of FHWA:

(a) That drinking water supply systems shall be designed, constructed, and maintained to provide water which meets drinking water standards established by EPA in 40 CFR part 141 promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as amended, or State standards, whichever are more stringent;

(b) That onsite sewage treatment facilities shall be designed, constructed, and operated to meet:

(1) Effluent limitations established by EPA in 40 CFR part 133 promulgated pursuant to the Clean Water Act, 33 U.S.C. 1311 *et seq.*, as amended, or State standards, whichever are more stringent,

(2) The receiving water quality standards, and

(3) Requirements for any sole source aquifer as established in 40 CFR part 141 promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. 330f *et seq.*, as amended, or State standards, whichever are more stringent; and

(c) That sewage systems not covered by paragraph (b) of this section shall be designed, constructed, and operated to meet the applicable State standards.

§ 650.509 Site selection.

Adequate information shall be obtained in the site selection process to insure that the following conditions can be met:

(a) The availability of a drinking water supply source in adequate quantity and quality, including water from public water supply systems.

(b) The capability to dispose of sewage generated by the safety rest areas in a manner consistent with these regulations, including any potential impact to sole source aquifers. Where a public sewage system is to be utilized, the system's ability to adequately treat and dispose of the sewage shall be ascertained.

§ 650.511 Water supply facilities.

The following factors shall apply to the design of water supply facilities for safety rest areas:

(a) In the interest of conserving energy and underground water resources, reduced-flow fixtures shall be considered for the safety rest area building.

(b) Water treatment shall be accomplished at the site as may be necessary to meet drinking water standards.

(c) Onsite storage, auxiliary supplies or recirculating units shall be provided as may be necessary to obtain a water supply that will meet peak demands.

(d) The safety rest area's drinking water supply, regardless of source, shall be monitored in accordance with State regulatory agency standards.

§ 650.513 Sewage treatment facilities.

The following factors shall apply to the design of sewage treatment facilities for safety rest areas:

(a) The permit required under the National Pollution Discharge Elimination System (NPDES) shall be obtained prior to approval of Plans, Specifications and Estimate (PS&E) and authorization for the advertisement of bids.

(b) Sewage treatment shall be accomplished at the site as may be necessary to meet effluent limitations. Any effluent shall be monitored in accordance with the standards established by the NPDES permit.

§ 650.515 Federal-aid participation in construction costs.

(a) *New safety rest areas.* (1) Federal-aid projects may be approved for the construction of drinking water supply and sewage treatment facilities that will meet the requirements of § 650.507.

(2) Federal-aid participation in the cost to connect to public facilities may include participation in the State highway agency's share of the cost to construct, expand or improve the public facility to assure adequate water supply or sewage treatment. Participation in amounts expended for capital improvements to the public facility will be limited to the lesser of:

(i) The appropriate pro rata share of the highway project's contribution to the need for the improvements;

(ii) The present worth of the capital investment, maintenance and operation costs of an onsite facility.

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(3) Federal-aid Interstate (FAI) construction funds may be used for safety rest areas on the Interstate System if the work is necessary to replace existing similar services on gap sections or as part of the approved major upgrading of an incorporated segment. The FAI construction funds are limited to costs for speed change lanes, entrance and exit roadways, circulatory roads, parking areas, walkways, curbs, lighting installation, replacement of other existing similar services, and corresponding preliminary engineering and right-of-way costs.

(4) For Interstate projects, the work described in paragraphs (a) (1) and (2) of this section that is not eligible for FAI construction funds shall be eligible for funding with Interstate 4R funds or primary funds. This would include the costs for both construction and completion of improvement of safety rest areas and the costs of any upgrading of water supply facilities, sewage treatment facilities or provisions to serve the handicapped.

(b) *Existing safety rest areas*—(1) *Quantity requirements.* Federal-aid funds other than FAI construction funds may be used to expand or improve water supply and sewage systems at existing safety rest areas without regard for the design year for the original construction.

(2) *Quality requirements.* (i) The use of Federal-aid funds other than FAI construction funds may be approved to improve or replace existing water supply systems which fail to meet existing or new and more stringent drinking water quality standards imposed pursuant to Federal or State law.

(ii) Where safety rest area sewage effluent quality does not meet effluent limitations, the use of Federal-aid funds other than FAI construction funds in sewage treatment facility replacement or improvements to meet those standards may be authorized for projects where the construction of these facilities was authorized prior to the date of this regulation, subject to the following:

(A) Evidence of a failure of existing treatment facility to meet effluent standards established by field investigation and appropriate testing of influent and effluent samples.

(B) Failure to meet effluent standards is not a result of inadequate maintenance or plant operation. If plant operation is deficient, such steps as increased operator training or certification should be accomplished.

(C) Receipt of an engineering report describing the characteristics, volumes, and rates of sewage flows. The report should also contain design computations and a discussion of modifications required to meet the standards.

(c) *Procedures.* Project proposals which incorporate sophisticated processes or involve difficult design problems should be forwarded to the Regional Federal Highway Administrator for review and comment. The Washington Headquarters office is available for consultation upon request.

Subpart F—Concrete Bridge Decks

SOURCE: 49 FR 1181, Jan. 10, 1984, unless otherwise noted.

§ 650.601 Purpose.

The purpose of this subpart is to prescribe policies and procedures for the construction, rehabilitation, and reconstruction of concrete bridge decks with special emphasis on protective systems within the existing controls on the expenditures of Federal-aid funds.

§ 650.603 Definitions.

(a) *Construction* means the initial construction of any specific bridge deck.

(b) *Maintenance* means routine or incidental work necessary to keep a bridge deck functioning in a safe and efficient manner.

(c) *Protective system* means a system used to protect bridge decks from deterioration induced by highway deicing chemicals, salt water, or other hostile environments.

(d) *Reconstruction* means the restoration of the structural integrity of a concrete bridge deck by complete removal and replacement of the existing deteriorated bridge deck.

(e) *Rehabilitation* means the work necessary to restore the structural in-

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tegrity of portions of the original bridge deck as well as the installation of a deck protective system.

§ 650.605 Construction, reconstruction, and rehabilitation.

The following policies are established for all bridge decks to be constructed, rehabilitated, or reconstructed with Federal-aid funds.

(a) *Standard specifications.* States shall adopt design and construction specifications which are equal to or better than those specified in 23 CFR part 625, Design Standards for Highways. Exceptions. Approval in accordance with 23 CFR 625.3 and within the delegated authority provided by FHWA may be given to designs on a project basis which do not conform to the minimum design criteria set forth in 23 CFR 625.4.

(b) *Protective system.* When a bridge deck is likely to be exposed to potentially damaging applications of deicing chemicals, salt water, or other hostile environment, a cost effective protective system is required.

(1) Approval of the type of protective system is made in accordance with the provisions of § 650.609.

(2) The installation of a protective system not contemplated when the bridge deck was initially constructed is not eligible for Interstate construction funds.

(3) The installation of a protective system is eligible for Interstate 4R funds or from another appropriate category.

(c) *Eligible work.* Reconstruction and rehabilitation procedures necessary to assure acceptable performance of existing structures are set forth below and are eligible for Federal-aid participation from the appropriate category. Reconstruction and rehabilitation shall include all work required to assure satisfactory performance of the concrete deck, as well as the supporting superstructure and substructure units.

(1) This may include items such as the removal of existing overlays, removal and replacement of all deteriorated components or the complete removal and replacement of the entire bridge deck if necessary.

(2) This work may also include repair or removal and replacement of deteriorated concrete curbs, sidewalks, parapets, as well as rail, deck joints, bearings, or similar incidental items which are associated with proper functional restoration of the structure.

(3) Consistent with 23 CFR part 924, safety improvements should be undertaken with the above described work when such improvements eliminate an established hazardous condition. Such safety improvements may include widening, elimination of hazardous walks, and substandard safety hardware, removal of hazardous fixed objects or the installation of an energy absorbing barrier system, and any other features that are consistent with current safety standards.

[49 FR 1181, Jan. 10, 1984, as amended at 51 FR 16834, May 7, 1986]

§ 650.607 Maintenance.

The following policies are established for the use of Federal-aid funds as related to maintenance activities.

(a) Maintenance work is considered an obligation of the State and is not eligible for Federal-aid funding.

(b) Spot patching of a bridge deck is maintenance unless it is done as work incidental to the rehabilitation or reconstruction of the concrete bridge deck.

(c) The resurfacing of a bridge deck is considered maintenance when such work only restores the general condition of the riding surface and will not significantly affect the structural integrity and durability characteristics of the original deck.

§ 650.609 Protective system.

In view of the recognized need for protective systems, the following policies have been established for Federal-aid participation.

(a) The contract plans, specifications, and estimate (PS&E) for the construction, rehabilitation, and/or reconstruction of all concrete bridge decks that are likely to be subjected to potentially damaging applications of deicing salts, saltwater, or other hostile environments shall provide for durable concrete as well as a protective system that is cost effective.

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(b) *Federal-aid approval.* Approval of the protective system will be required as part of the approval of the PS&E.

(1) Protective systems which, based on local field experience, have not been demonstrated to be cost effective must be considered experimental. These systems are to be surveyed and evaluated on an experimental basis under the Federal Highway Administration (FHWA) Experimental Projects Program.

(2) Proprietary products, when used as bridge deck protective systems, must be used in accordance with Federal regulations on the use of proprietary products.

Subpart G—Discretionary Bridge Candidate Rating Factor

SOURCE: 48 FR 52296, Nov. 17, 1983, unless otherwise noted.

§ 650.701 Purpose.

The purpose of this regulation is to describe a rating factor used as part of a selection process of allocation of discretionary bridge funds made available to the Secretary of Transportation under 23 U.S.C. 144.

§ 650.703 Eligible projects.

(a) Deficient highway bridges on Federal-aid highway system roads may be eligible for allocation of discretionary bridge funds to the same extent as they are for bridge funds apportioned under 23 U.S.C. 144, provided that the total project cost for a discretionary bridge candidate is at least $10 million or twice the amont of 23 U.S.C. 144 funds apportioned to the State during the fiscal year for which funding for the candidate bridge is requested.

(b) After the effective date of this regulation for the discretionary bridge candidate rating factor, only candidate bridges not previously selected with a computed rating factor of 100 or less will be eligible for consideration.

§ 650.705 Application for discretionary bridge funds.

Each year through its field offices, the FHWA will issue an annual call for discretionary bridge candidate submittals including updates of previously submitted but not selected projects. Each State is responsible for submitting such data as required for candidate bridges. Data requested will include structure number, funds needed by fiscal year, total project cost, current average daily truck traffic and a narrative describing the existing bridge, the proposed new or rehabilitated bridge and other relevant factors which the State believes may warrant special consideration.

§ 650.707 Rating factor.

(a) The following formula is to be used in the selection process for ranking discretionary bridge candidates:

$$\text{Rating Factor (RF)} = \frac{SR}{D} \times \frac{TPC}{ADT'} \times \left[1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}}\right]$$

The lower the rating factor, the higher the priority for selection and funding.

(b) The terms in the rating factor are defined as follows:

SR is Sufficiency Rating computed as illustrated in appendix A of the Recording and Coding Guide for the Structure inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition); (If SR is less than 1.0, use SR = 1.0);

ADT is Average Daily Traffic in thousands taking the most current value from the national bridge inventory data;

ADTT is Average Daily Truck Traffic in thousands (Pick up trucks and light delivery trucks not included);

For load posted bridges, the ADTT furnished should be that which would use the bridge if traffic were not restricted.

The ADTT should be the annual average volume, not peak or seasonal.

D is Defense Highway System Status

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D=1 if not on defense highway
D=1.5 if bridge carries a designated defense highway

The last term of the rating factor expression includes the State's unobligated balance of funds received under 23 U.S.C. 144 as of June 30 preceding the date of calculation, and the total funds received under 23 U.S.C. 144 for the last four fiscal years ending with the most recent fiscal year of the FHWA's annual call for discretionary bridge candidate submittals; (if unobligated HBRRP balance is less than $10 million, use zero balance);

TPC is Total Project Cost in millions of dollars;
HBRRP is Highway Bridge Replacement and Rehabilitation Program;
ADT' is ADT plus ADTT.

(c) In order to balance the relative importance of candidate bridges with very low (less than one) sufficiency ratings and very low ADT's against candidate bridges with high ADT's, the minimum sufficiency rating used will be 1.0. If the computed sufficiency rating for a candidate bridge is less than 1.0, use 1.0 in the rating factor formula.

(d) If the unobligated balance of HBRRP funds for the State is less than $10 million, the HBRRP modifier is 1.0. This will limit the effect of the modifier on those States with small apportionments or those who may be accumulating funds to finance a major bridge.

[48 FR 52296, Nov. 17, 1983; 48 FR 53407, Nov. 28, 1983]

§ 650.709 Special considerations.

(a) The selection process for new discretionary bridge projects will be based upon the rating factor priority ranking. However, although not specifically included in the rating factor formula, special consideration will be given to bridges that are closed to all traffic or that have a load restriction of less than 10 tons. Consideration will also be given to bridges with other unique situations, and to bridge candidates in States which have not previously been allocated discretionary bridge funds.

(b) The need to administer the program from a balanced national perspective requires that the special cases set forth in paragraph (a) of this section and other unique situations be considered in the discretionary bridge candidate evaluation process.

(c) Priority consideration will be given to the continuation and completion of bridge projects previously begun with discretionary bridge funds.

Subpart H—Navigational Clearances for Bridges

SOURCE: 52 FR 28139, July 28, 1987, unless otherwise noted.

§ 650.801 Purpose.

The purpose of this regulation is to establish policy and to set forth coordination procedures for Federal-aid highway bridges which require navigational clearances.

§ 650.803 Policy.

It is the policy of FHWA:

(a) To provide clearances which meet the reasonable needs of navigation and provide for cost-effective highway operations,

(b) To provide fixed bridges wherever practicable, and

(c) To consider appropriate pier protection and vehicular protective and warning systems on bridges subject to ship collisions.

§ 650.805 Bridges not requiring a USCG permit.

(a) The FHWA has the responsibility under 23 U.S.C. 144(h) to determine that a USCG permit is not required for bridge construction. This determination shall be made at an early stage of project development so that any necessary coordination can be accomplished during environmental processing.

(b) A USCG permit shall not be required if the FHWA determines that the proposed construction, reconstruction, rehabilitation, or replacement of the federally aided or assisted bridge is over waters (1) which are not used or are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce and (2) which are (i) not tidal, or (ii) if tidal, used only by recreational boating, fishing, and other small vessels less than 21 feet in length.

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(c) The highway agency (HA) shall assess the need for a USCG permit or navigation lights or signals for proposed bridges. The HA shall consult the appropriate District Offices of the U.S. Army Corps of Engineers if the susceptibility to improvement for navigation of the water of concern is unknown and shall consult the USCG if the types of vessels using the waterway are unknown.

(d) For bridge crossings of waterways with navigational traffic where the HA believes that a USCG permit may not be required, the HA shall provide supporting information early in the environmental analysis stage of project development to enable the FHWA to make a determination that a USCG permit is not required and that proposed navigational clearances are reasonable.

(e) Since construction in waters exempt from a USCG permit may be subject to other USCG authorizations, such as approval of navigation lights and signals and timely notice to local mariners of waterway changes, the USCG should be notified whenever the proposed action may substantially affect local navigation.

§ 650.807 Bridges requiring a USCG permit.

(a) The USCG has the responsibility (1) to determine whether a USCG permit is required for the improvement or construction of a bridge over navigable waters except for the exemption exercised by FHWA in § 650.805 and (2) to approve the bridge location, alignment and appropriate navigational clearances in all bridge permit applications.

(b) A USCG permit shall be required when a bridge crosses waters which are: (1) tidal and used by recreational boating, fishing, and other small vessels 21 feet or greater in length or (2) used or susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce. If it is determined that a USCG permit is required, the project shall be processed in accordance with the following procedures.

(c) The HA shall initiate coordination with the USCG at an early stage of project development and provide opportunity for the USCG to be involved throughout the environmental review process in accordance with 23 CFR part 771. The FHWA and Coast Guard have developed internal guidelines which set forth coordination procedures that both agencies have found useful in streamlining and expediting the permit approval process. These guidelines include (1) USCG/FHWA Procedures for Handling Projects which Require a USCG Permit [1] and (2) the USCG/FHWA Memorandum of Understanding on Coordinating The Preparation and Processing of Environmental Projects. [2]

(d) The HA shall accomplish sufficient preliminary design and consultation during the environmental phase of project development to investigate bridge concepts, including the feasibility of any proposed movable bridges, the horizontal and vertical clearances that may be required, and other location considerations which may affect navigation. At least one fixed bridge alternative shall be included with any proposal for a movable bridge to provide a comparative analysis of engineering, social, economic and environmental benefit and impacts.

(e) The HA shall consider hydraulic, safety, environmental and navigational needs along with highway costs when designing a proposed navigable waterway crossing.

(f) For bridges where the risk of ship collision is significant, HA's shall consider, in addition to USCG requirements, the need for pier protection and warning systems as outlined in FHWA Technical Advisory 5140.19, Pier Protection and Warning Systems for Bridges Subject to Ship Collisions, dated February 11, 1983.

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[1] This document is an internal directive in the USCG Bridge Administration Manual, Enclosure 1a, COMDT INST M16590.5, change 2 dated Dec. 1, 1983. It is available for inspection and copying from the U.S. Coast Guard or the Federal Highway Administration as prescribed in 49 CFR part 7, appendices B and D.

[2] FHWA Notice 6640.22 dated July 17, 1981, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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(g) Special navigational clearances shall normally not be provided for accommodation of floating construction equipment of any type that is not required for navigation channel maintenance. If the navigational clearances are influenced by the needs of such equipment, the USCG should be consulted to determine the appropriate clearances to be provided.

(h) For projects which require FHWA approval of plans, specifications and estimates, preliminary bridge plans shall be approved at the appropriate level by FHWA for structural concepts, hydraulics, and navigational clearances prior to submission of the permit application.

(i) If the HA bid plans contain alternative designs for the same configuration (fixed or movable), the permit application shall be prepared in sufficient detail so that all alternatives can be evaluated by the USCG. If appropriate, the USCG will issue a permit for all alternatives. Within 30 days after award of the construction contract, the USCG shall be notified by the HA of the alternate which was selected. The USCG procedure for evaluating permit applications which contain alternates is presented in its Bridge Administration Manual (COMDT INST M16590.5).[3] The FHWA policy on alternates, Alternate Design for Bridges; Policy Statement, was published at 48 FR 21409 on May 12, 1983.

§ 650.809 Movable span bridges.

A fixed bridge shall be selected wherever practicable. If there are social, economic, environmental or engineering reasons which favor the selection of a movable bridge, a cost benefit analysis to support the need for the movable bridge shall he prepared as a part of the preliminary plans.

[3] United States Coast Guard internal directives are available for inspection and copying as prescribed in 49 CFR part 7, appendix B.

PART 652—PEDESTRIAN AND BICYCLE ACCOMMODATIONS AND PROJECTS

Sec.
652.1 Purpose.
652.3 Definitions.
652.5 Policy.
652.7 Eligibility.
652.9 Federal participation.
652.11 Planning.
652.13 Design and construction criteria.

AUTHORITY: 23 U.S.C. 109, 217, 315, 402(b)(1)(F); 49 CFR 1.48(b).

SOURCE: 49 FR 10662, Mar. 22, 1984, unless otherwise noted.

§ 652.1 Purpose.

To provide policies and procedures relating to the provision of pedestrian and bicycle accommodations on Federal-aid projects, and Federal participation in the cost of these accommodations and projects.

§ 652.3 Definitions.

(a) *Bicycle.* A vehicle having two tandem wheels, propelled solely by human power, upon which any person or persons may ride.

(b) *Bikeway.* Any road, path, or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

(c) *Bicycle Path (Bike Path).* A bikeway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way.

(d) *Bicycle Lane (Bike Lane).* A portion of a roadway which has been designated by striping, signing and pavement markings for the preferential or exclusive use of bicyclists.

(e) *Bicycle Route (Bike Route).* A segment of a system of bikeways designated by the jurisdiction having authority with appropriate directional and informational markers, with or without a specific bicycle route number.

(f) *Shared Roadway.* Any roadway upon which a bicycle lane is not designated and which may be legally used

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by bicycles regardless of whether such facility is specifically designated as a bikeway.

(g) *Pedestrian Walkway or Walkway.* A continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

(h) *Highway Construction Project.* A project financed in whole or in part with Federal-aid or Federal funds for the construction, reconstruction or improvement of a highway or portions thereof, including bridges and tunnels.

(i) *Independent Bicycle Construction Project (Independent Bicycle Project).* A project designation used to distinguish a bicycle facility constructed independently and primarily for use by bicyclists from an improvement included as an incidental part of a highway construction project.

(j) *Independent Pedestrian Walkway Construction Project (Independent Walkway Project).* A project designation used to distinguish a walkway constructed independently and solely as a pedestrian walkway project from a pedestrian improvement included as an incidental part of a highway construction project.

(k) *Incidental Bicycle or Pedestrian Walkway Construction Project (Incidental Feature).* One constructed as an incidental part of a highway construction project.

(l) *Nonconstruction Bicycle Project.* A bicycle project not involving physical construction which enhances the safe use of bicycles for transportation purposes.

(m) *Snowmobile.* A motorized vehicle solely designed to operate on snow or ice.

§ 652.5 Policy.

The safe accommodation of pedestrians and bicyclists should be given full consideration during the development of Federal-aid highway projects, and during the construction of such projects. The special needs for the elderly and the handicapped shall be considered in all Federal-aid projects that include pedestrian facilities. Where current or anticipated pedestrian and/or bicycle traffic presents a potential conflict with motor vehicle traffic, every effort shall be made to minimize the detrimental effects on all highway users who share the facility. On highways without full control of access where a bridge deck is being replaced or rehabilitated, and where bicycles are permitted to operate at each end, the bridge shall be reconstructed so that bicycles can be safely accommodated when it can be done at a reasonable cost. Consultation with local groups of organized bicyclists is to be encouraged in the development of bicycle projects.

§ 652.7 Eligibility.

(a) Independent bicycle projects, incidental bicycle projects, and nonconstruction bicycle projects must be principally for transportation rather than recreational use and must meet the project conditions for authorization where applicable.

(b) The implementation of pedestrian and bicycle accommodations may be authorized for Federal-aid participation as either incidental features of highways or as independent projects where all of the following conditions are satisfied.

(1) The safety of the motorist, bicyclist, and/or pedestrian will be enhanced by the project.

(2) The project is initiated or supported by the appropriate State highway agency(ies) and/or the Federal land management agency. Projects are to be located and designed pursuant to an overall plan, which provides due consideration for safety and contiguous routes.

(3) A public agency has formally agreed to:

(i) Accept the responsibility for the operation and maintenance of the facility,

(ii) Ban all motorized vehicles other than maintenance vehicles, or snowmobiles where permitted by State or local regulations, from pedestrian walkways and bicycle paths, and

(iii) Ban parking, except in the case of emergency, from bicycle lanes that are contiguous to traffic lanes.

(4) The estimated cost of the project is consistent with the anticipated benefits to the community.

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(5) The project will be designed in substantial conformity with the latest official design criteria. (See § 652.13.)

[49 FR 10662, Mar. 22, 1984; 49 FR 14729, Apr. 13, 1984]

§ 652.9 Federal participation.

(a) Independent walkway projects, independent bicycle projects and nonconstruction bicycle projects shall be financed with 100 percent Federal-aid primary, secondary or urban highway funds, provided the total amount obligated for all such projects in any one State in any fiscal year does not exceed $4.5 million of Federal-aid funds or a lesser amount apportioned by the Federal Highway Administrator to avoid exceeding the annual $45 million cost limitation on these projects for all States in a fiscal year. The Federal Highway Administrator may, upon application, waive this limitation for a State for any fiscal year. This limitation also applies to projects funded under § 652.9(d). This limitation does not apply to projects of the type described in § 652.9(c). The FHWA Offices of Direct Federal Programs and Engineering will coordinate projects of the type described in § 652.9(d) to ensure that the annual cost limitations will not be exceeded.

(b) Specific eligibility requirements for Federal-aid participation in independent and nonconstruction projects are:

(1) An independent walkway project must be constructed on highway right-of-way or easement, or right-of-way acquired for this purpose. Independent walkway projects may be constructed separately or in conjunction with a Federal-aid highway construction project. Where an independent walkway project is located away from the Federal-aid highway right-of-way, it must serve pedestrians who would normally desire to use the Federal-aid route.

(2) An independent bicycle project may include the acquisition of land needed for the facility, or such projects may be constructed on existing highway right-of-way or easement acquired for this purpose. Independent bicycle projects may include construction of bicycle lanes, paths, shelters, bicycle parking facilities and other roadway and bridge work necessary to accommodate bicyclists.

(3) Nonconstruction bicycle projects must be related to the safe use of bicycles for transportation, and may include safety educational material and route maps for safe bicycle transportation purposes. Nonconstruction bicycle projects shall not include salaries for administration, law enforcement, maintenance and similar items required to operate transportation networks and programs, but may include cost of staff or consultants for development of specific nonconstruction projects.

(c) Bicycle and pedestrian accommodations may also be constructed as incidental features of highway construction projects. These incidental features may be financed with the same type of Federal-aid funds, including funds of the type described in § 652.9(d) (except Interstate construction funds) and at the same Federal share payable as a basic highway project. These accommodations are not subject to the funding limitations for independent walkway, independent bicycle and nonconstruction bicycle projects. In the case of the Interstate construction projects, Federal-aid Interstate construction funds may only be used to replace existing facilities that would be interrupted by construction of the project, or to mitigate specific environmental impacts. Interstate 4R funds provided by 23 U.S.C. 104(b)(5)(B) may be used only for incidental features. As incidental features, these accommodations must be part of a highway improvement and must be located within the right-of-way of the highway, including land acquired under 23 U.S.C. 319 (Scenic Enhancement Program).

(d) Funds authorized for Federal lands highways (forest highways, public lands highways, park roads, parkways, and Indian reservation roads which are public roads), forest development roads and trails (i.e., roads or trails under the jurisdiction of the Forest Service), and public lands development roads and trails (i.e., roads or trails which the Secretary of the Interior determines are of primary importance for the development, protection, administration, and

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utilization of public lands and resources under his/her control), may be used for independent bicycle routes and independent walkway projects. These funds may not be used for nonconstruction bicycle projects.

§ 652.11 Planning.

Federally aided bicycle and pedestrian projects implemented within urbanized areas must be included in the transportation improvement program/annual (or biennial) element unless excluded by agreement between the State and the metropolitan planning organization.

§ 652.13 Design and construction criteria.

(a) The American Association of State Highway and Transportation Officials' "Guide for Development of New Bicycle Facilities, 1981" (AASHTO Guide) or equivalent guides developed in cooperation with State or local officials and acceptable to the division office of the FHWA, shall be used as standards for the construction and design of bicycle routes. Copies of the AASHTO Guide may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 225, Washington, DC 20001.

(b) Curb cuts and other provisions as may be appropriate for the handicapped are required on all Federal and Federal-aid projects involving the provision of curbs or sidewalks at all pedestrian crosswalks.

PART 655—TRAFFIC OPERATIONS

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655.707 Evaluation.

AUTHORITY: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 48 CFR 1.48(b).

Subpart A—Traffic Operations Improvement Programs (Topics)

SOURCE: 43 FR 58564, Dec. 15, 1978, unless otherwise noted.

§ 655.101 Purpose.

The purpose of this regulation is to prescribe policies and procedures for the administration of traffic operations improvement programs.

§ 655.103 Policy and procedure.

Each State shall have a continuing program designed to reduce traffic congestion and to directly facilitate traffic flow.

§ 655.105 Federal participation.

Eligible traffic operation improvements may be financed from funds available for:

(a) The specific roadway on which the improvement is made, or

(b) The system which directly benefits from the improvement.

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§ 655.107 Eligibility.

(a) Improvements on any public road which will ensure the efficient use of existing roadways on any of the Federal-aid systems through improved traffic flow, or reduced vehicle congestion, or improved transit service or eligible as projects.

(b) *Parking improvements or modifications*—(1) Offstreet replacement parking facilities are eligible when as a part of an eligible improvement the removal of onstreet parking is required from areas already critically short of parking space.

(2) Angle (diagonal) parking is allowable on Federal-aid projects if in the judgment of the Division Administrator there will not be adverse effects on street capacity and safety.

[43 FR 58564, Dec. 15, 1978, as amended at 51 FR 39748, Oct. 31, 1986]

§ 655.109 Evaluation.

The State's program should provide for evaluation of new or unusual features. Federal funding of evaluation work may be approved under 23 U.S.C. 104, 307(c), or 402, as appropriate. Construction funds under 23 U.S.C. 104 may be used for project evaluations, but shall not be used for program evaluations.

Subparts B—C [Reserved]

Subpart D—Traffic Surveillance and Control

SOURCE: 49 FR 8436, Mar. 7, 1984, unless otherwise noted.

§ 655.401 Purpose.

The purpose of this regulation is to provide policies and procedures relating to Federal-aid requirements of traffic surveillance and control system projects.

§ 655.403 Traffic surveillance and control systems.

(a) A traffic surveillance and control system is an array of human, institutional, hardware and software components designed to monitor and control traffic, and to manage transportation on streets and highways and thereby improve transportation performance, safety, and fuel efficiency.

(b) Systems may have various degrees of sophistication. Examples include, but are not limited to, the following systems: traffic signal control, freeway surveillance and control, and highway advisory radio, reversible lane control, tunnel and bridge control, adverse weather advisory, remote control of movable bridges, and priority lane control.

(c) Systems start-up is the process necessary to assure the surveillance and control project operates effectively. The start-up process is accomplished in a limited time period immediately after the system is functioning and consists of activities to achieve optimal performance. These activities include evaluation of the hardware, software and system performance on traffic; completion and updating of basic data needed to operate the system; and any modifications or corrections needed to improve system performance.

§ 655.405 Policy.

Implementation and efficient utilization of traffic surveillance and control systems are essential to optimize transporation systems efficiency, fuel conservation, safety, and environmental quality.

§ 655.407 Eligibility.

Traffic surveillance and control system projects are an integral part of Federal-aid highway construction and all phases of these projects are eligible for funding with appropriate Federal-aid highway funds. The degree of sophistication of any system must be in scale with needs and with the availability of personnel and budget resources to operate and maintain the system.

§ 655.409 Traffic engineering analysis.

Traffic surveillance and control system projects shall be based on a traffic engineering analysis. The analysis should be on a scale commensurate with the project scope. The basic elements of the analysis are:

(a) *Preliminary analysis.* The Preliminary Traffic Engineering Analysis

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should determine: The area to be controlled; transportation characteristics; objectives of the system; existing systems resources (including communications); existing personnel and budget resources for the maintenance and operation of the system.

(b) *Alternative systems analysis.* Alternative systems should be analyzed as applicable. For the alternatives considered, the analysis should encompass incremental initial costs; required maintenance and operating budget and personnel resources; and expected benefits. Improved use of existing resources, as applicable, should be considered also.

(c) *Procurement and system start-up analysis.* Procurement and system start-up methods should be considered in the analysis. Federal-aid laws, regulations, policies, and procedures provide considerable flexibility to accommodate the special needs of systems procurement.

(d) *Special features analysis.* Unique or special features including special components and functions (such as emergency vehicle priority control, redundant hardware, closed circuit television, etc.) should be specifically evaulated in relation to the objectives of the system and incremental initial costs, operating costs, and resource requirements.

(e) *Analysis of laws and ordinances.* Existing traffic laws, ordinances, and regulations relevant to the effective operation of the proposed system shall be reviewed to ensure compatibility.

(f) *Operations plan.* The final element in the traffic engineering analysis shall be an operations plan. It shall include needed legislation, systems design, procurement methods, construction management procedures including acceptance testing, system start-up plan, operation and maintenance plan. It shall include necessary institutional arrangements and the dedication of needed personnel and budget resources required for the proposed system.

(Approved by the Office of Management and Budget under control number 2125-0512)

§ 655.411 Project administration.

(a) Prior to authorization of Federal-aid highway funds for construction, there should be a commitment to the operations plan (see § 655.409 (f)).

(b) The plans, specifications and estimates submittal shall include a total system acceptance plan.

(c) Project approval actions are delegated to the Division Administrator. Approval actions for traffic surveillance and control system projects costing over $1,000,000 are subject to review by the Regional Administrator prior to approval of plans, specifications, and estimates.

(d) System start-up is an integral part of a surveillance and control project.

(1) Costs for system start-up, over and above those attributable to routine maintenance and operation, are eligible for Federal-aid funding.

(2) Final project acceptance should not occur until after completion of the start-up phase.

Subpart E—[Reserved]

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

SOURCE: 48 FR 46776, Oct. 14, 1983, unless otherwise noted.

§ 655.601 Purpose.

To prescribe the policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices on all streets and highways in accordance with the following references that are approved by the FHWA for application on Federal-aid projects:

(a) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1988, as of March 1989. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. It may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 and has Stock No. 050-001-81001-8. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D).

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(b) Standard Alphabets for Highway Signs, FHWA, 1966 Edition, Reprinted May 1972. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. This document is available for inspection and copying as provided in 49 CFR part 7, appendix D).

(c) Traffic Surveillance and Control, FHWA, 23 CFR part 655, subpart D.

(d) Motorist Aid Systems, FHWA, 23 CFR part 655, subpart G.

(e) Pavement Marking Demonstration Program, FHWA, 23 CFR part 920.

[51 FR 16834, May 7, 1986, as amended at 53 FR 8626, Mar. 16, 1988; 54 FR 3004, Jan. 23, 1989; 55 FR 2374, Jan. 24, 1990]

§ 655.602 Definitions.

The terms used herein are defined in accordance with definitions and usages contained in the MUTCD and 23 U.S.C. 101(a).

§ 655.603 Standards.

(a) *National MUTCD.* The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C 109(d) and 402(a). The national MUTCD is specifically approved by the FHWA for application on any highway project in which Federal highway funds participate and on projects in federally administered areas where a Federal department or agency controls the highway or supervises the traffic operations.

(b) *State or other Federal MUTCD.* (1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Changes to the national MUTCD issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The FHWA Regional Administrator has been delegated the authority to approve State MUTCDs and supplements.

(2) The Direct Federal Program Administrator has been delegated the authority to approve other Federal agency MUTCDs with the concurrence of the Office of Traffic Operations. States and other Federal agencies are encouraged to adopt the national MUTCD as their official Manual on Uniform Traffic Control Devices.

(c) *Color specifications.* Color determinations and specifications of sign and pavement marking materials shall conform to requirements of the FHWA Color Tolerance Charts.[2] An alternate method of determining the color of retroreflective sign material is provided in the appendix.

(d) *Compliance*—(1) *Existing highways.* Each State, in cooperation with its political subdivisions, and Federal agencies shall have a program as required by Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4) which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

(2) *New or reconstructed highways.* Federal-aid projects for the construction, reconstruction, resurfacing, restoration, or rehabilitation of streets and highways shall not be opened to the public for unrestricted use until all appropriate traffic control devices, either temporary or permanent, are installed and functioning properly. Both temporary and permanent devices shall conform to the MUTCD.

(3) *Construction area activities.* All traffic control devices installed in construction areas using Federal-aid funds shall conform to the MUTCD. Traffic control plans for handling traffic and pedestrians in construction zones and for protection of workers shall conform to the requirements of 23 CFR part 630, subpart J, Traffic Safety in Highway and Street Work Zones.

(4) *MUTCD changes.* The FHWA may establish target dates for achieving compliance with changes to specific devices in the MUTCD.

[2] Available for inspection from the Office of Traffic Operations, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

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(e) *Specific information signs.* Standards for specific information signs are contained in the MUTCD.

[48 FR 46776, Oct. 14, 1983, as amended at 51 FR 16834, May 7, 1986]

§ 655.604 Achieving basic uniformity.

(a) *Programs.* Programs for the orderly and systematic upgrading of existing traffic control devices or the installation of needed traffic control devices on or off the Federal-aid system should be based on inventories made in accordance with 23 CFR 1204.4, Highway Safety Program Standards. These inventories provide the information necessary for programming traffic control device upgrading projects.

(b) *Inventory.* An inventory of all traffic control devices is required by Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4). Highway planning and research funds and highway related safety grant program funds may be used in statewide or systemwide studies or inventories. Also, metropolitan planning (PL) funds may be used in urbanized areas provided the activity is included in an approved unified work program.

§ 655.605 Project procedures.

(a) *Federal-aid highways.* Federal-aid projects involving the installation of traffic control devices shall follow procedures as established in 23 CFR part 630, subpart A, Federal-Aid Programs Approval and Project Authorization. Simplified and timesaving procedures are to be used to the extent permitted by existing policy.

(b) *Off-system highways.* Certain federally funded programs are available for installation of traffic control devices on streets and highways that are not on the Federal-aid system. The procedures used in these programs may vary from project to project but, essentially, the guidelines set forth herein should be used.

§ 655.606 Higher cost materials.

The use of signing, pavement marking, and signal materials (or equipment) having distinctive performance characteristics, but costing more than other materials (or equipment) commonly used may be approved by the FHWA Division Administrator when the specific use proposed is considered to be in the public interest.

§ 655.607 Funding.

(a) *Federal-aid highways.* (1) Funds apportioned or allocated under 23 U.S.C. 104(b) are eligible to participate in projects to install traffic control devices in accordance with the MUTCD on newly constructed, reconstructed, resurfaced, restored, or rehabilitated highways, or on existing highways when this work is classified as construction in accordance with 23 U.S.C. 101(a). Federal-aid highway funds for eligible pavement markings and traffic control signalization may amount to 100 percent of the construction cost. Federal-aid highway funds apportioned or allocated under other sections of 23 U.S.C. are eligible for participation in improvements conforming to the MUTCD in accordance with the provisions of applicable program regulations and directives.

(2) Traffic control devices are eligible, in keeping with paragraph (a)(1) of this section, provided that the work is classified as construction in accordance with 23 U.S.C. 101(a) and the State or local agency has a policy acceptable to the FHWA Division Administrator for selecting traffic control devices material or equipment based on items such as cost, traffic volumes, safety, and expected service life. The State's policy should provide for cost-effective selection of materials which will provide for substantial service life taking into account expected and necessary routine maintenance. For these purposes, effectiveness would normally be measured in terms of durability, service life and/or performance of the material. Specific projects including material or equipment selection shall be developed in accordance with this policy. Proposed work may be approved on a project-by-project basis when the work is (i) clearly warranted, (ii) on a Federal-aid system, (iii) clearly identified by site, (iv) substantial in nature, and (v) of sufficient magnitude at any given location to warrant Federal-aid participation as a construction item.

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(3) The method of accomplishing the work will be in accordance with 23 CFR part 635, subpart A, Contract Procedures.

(b) *Off-system highways.* Certain Federal-aid highway funds are eligible to participate in traffic control device improvement projects on off-system highways. In addition, Federal-aid highway funds apportioned or allocated in 23 U.S.C. are eligible for the installation of traffic control devices on any public road not on the Federal-aid system when the installation is directly related to a traffic improvement project on a Federal-aid system route.

APPENDIX TO SUBPART F—ALTERNATE METHOD OF DETERMINING THE COLOR OF RETROREFLECTIVE SIGN MATERIALS

1. The FHWA Color Tolerance Charts provide that conventional color measuring instruments such as spectrophotometers and tristimulus photoelectric colorimeters should not be used for measurement of retroreflective material colors and that such materials should be evaluated visually using the Color Tolerance Charts and paying strict attention to prescribed illumination and viewing conditions.

2. As an alternate to visual testing, the diffuse day color of retroreflective sign material may be determined in accordance with ASTM E 97, "Standard Method of Test for 45-Degree, 0-Degree Directional Reflectance of Opaque Specimens by Filter Photometry." Geometric characteristics must be confined to illumination incident within 10 degrees of, and centered about, a direction of 45 degrees from the perpendicular to the test surface; viewing is within 15 degrees of, and centered about, the perpendicular to the test surface. Conditions of illumination and observation must not be interchanged.

3. Standards to be used for reference are the Munsell Papers designated in Table I or Table II, attached. The papers must be recently calibrated on a spectrophotometer. Acceptable test instruments are:

a. Gardner Multipurpose Reflectometer or Model XL 20 Color Difference Meter,

b. Gardner Model Ac-2a or XL 30 Color Difference Meter,

c. Meeco Model V Colormaster,

d. Hunter lab D25 Color Difference Meter, or

e. Approved equal.

4. Average performance sheeting is identified as Types I and II sheeting and high performance sheeting is identified as Types III and IV sheeting in Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects [3] (FP-79, Section 633).

TABLE I—COLOR SPECIFICATION LIMITS AND REFERENCE STANDARDS, TYPES I AND II SHEETING

Color	Chromaticity coordinates [1] (corner points)								Reflectance limits (percent Y)		Reference [3] standard (munsell papers)
	1		2		3		4				
	x	y	x	y	x	y	x	y	Minimum	Maximum	
White [2]	.305	.290	.350	.342	.321	.361	.276	.308	35	—	6.3Gy 6.77/0.8.
Red	.602	.317	.664	.336	.644	.356	.575	.356	8	12	8.2R 3.78/14.0.
Orange	.535	.375	.607	.393	.582	.417	.535	.399	18	30	2.5YR 5.5/14.0
Brown	.445	.353	.604	.396	.556	.443	.445	.386	4	9	5.OYR 3/6.
Yellow	.482	.450	.532	.465	.505	.494	.475	.485	29	45	1.25Y 6/12.
Green	.130	.369	.180	.391	.155	.460	.107	.439	3.5	9	0.65BG 2.84/8.45.
Blue	.147	.075	.176	.091	.176	.151	.106	.113	1.0	4	5 8PB 1.32/6.8.

[1] The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 standard colorimetric system measured with standard illumination source C.

[2] Silver white is an acceptable color designation.

[3] Available from Munsell Color Company. 2441 Calvert Street, Baltimore. Maryland 21218.

[3] This document is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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TABLE II—Color Specification Limits and Reference Standards, Types III and IV Sheeting

Color	Chromaticity Coordinates [1] (corner points)								Reflectance limits (percent Y)		Reference [3] standard (munsell papers)
	1		2		3		4				
	x	y	x	y	x	y	x	y	Min.	Max.	
White [2]	.303	287	.368	.353	.340	.380	.274	.316	27	.....	5.0PB 7/1.
Red	.613	.297	.708	.292	.636	.364	.558	.352	2.5	11	7.5R 3/12.
Orange	.550	.360	.630	.370	.581	.418	.516	.394	14	30	2.5YR 5.5/14.
Yellow	.498	.412	.557	.442	.479	.520	.438	.472	15	40	1.25Y 6/12.
Green	.030	.380	.166	.346	.286	.428	.201	.776	3	8	10G 3/8
Blue	.144	.030	.244	.202	.190	.247	.066	.208	1	10	5.8PB 1.32/6.8.

[1] The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 standard colorimetric system measured with standard illumination source C.
[2] Silver white is an acceptable color designation.
[3] Available from Munsell Color Company, 2441 Calvert Street, Baltimore, Maryland 21218.

Subpart G—Motorist-Aid Systems

SOURCE: 40 FR 20078, May 8, 1975, unless otherwise noted.

§ 655.701 Purpose.

The purpose of this subpart is to provide policies and procedures relating to motorist-aid systems on Federal-aid highways and for Federal participation in the cost of these systems.

§ 655.702 Definitions.

(a) *Motorist-aid system* means an installation of devices along the right-of-way which identifies the location of a stranded motorist, provides communication of his needs to central control locations, and provides the appropriate response to his needs.

(b) *Coded-message system* is a system in which the communication of needs is accomplished entirely by coded signals without voice intervention.

(c) *Voice system* is a system in which the communication of needs is accomplished by conversation between the stranded motorist and a system operator.

(d) *Roadside call terminal* is a device installed along the highway right-of-way which provides the means of communication between the motorist and the system operator.

(e) *Automatic location identification* denotes the display of a suitable, identifying code to the system operator which positively identifies the location of the motorist. The identifying code is transmitted automatically when the motorist uses the roadside call terminal.

§ 655.703 Policy.

The need for provision of motorist-aid systems on some Federal-aid highways is recognized, and the Federal Highway Administration will participate with interested States in the development of such systems.

§ 655.704 Procedures.

(a) Federal-aid highway construction funds may participate in installations of motorist-aid systems either on an experimental-project basis in accordance with the provisions of the Federal-Aid Highway Program Manual, volume 6, chapter 4, section 2, subsection 4[1] or on a normal Federal-aid basis. The following types of motorist-aid systems may be installed with regular Federal-aid construction funds participating.

(1) Coded-message systems (push-button or combined mechanical/push-button operation) having as a minimum, a "call confirmed" feature actuated at the receiving location, a call canceling feature at the roadside terminal (sending) location, automatic location identification, and served by responses which correspond to the coded messages sent from the sending location.

(2) Voice systems (wire and radio) having as a minimum, two-way communication, called party control, and automatic location identification.

[1] The Federal-Aid Highway Program Manual may be examined at the location stated in 49 CFR part 7, appendix D.

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All other systems are continued in an experimental status.

(b) All projects implemented under this subsection are subject to all normal Federal-aid procedures unless other procedures as approved by the Administrator are applicable.

(c) The State may select either voice operation or coded message operation for a project. The project specifications shall permit competition among all alternative types of equipment available for the operation selected; i.e., for voice operation, wire, radio, etc., equipment and for pushbutton operation, battery, batteryless, etc. Plans and specifications shall meet the requirements of parts 633 and 635 of this chapter.

(d) The Plans, Specifications, and Estimate (PS&E) shall contain provisions to insure that all necessary operational materials, devices, and equipment have been adequately tested under environmental conditions with extremes equal to or greater than that expected under operational conditions, prior to their installation. Equipment used in the installation shall be operation; i.e., development of equipment is not to be a part of the project.

(e) To be eligible for Federal-aid funds every proposed system shall have a complete operational response plan. This operational plan shall include agreements in writing between all the operating organizations, specifically delineating the responsibilities of each of the parties to the agreement. Among items which are to be covered in the agreements are: Procedure for answering calls, costs of provided services, and maintenance. This operational plan shall be complete at the time of submittal and shall accompany the PS&E.

(f) The collection, reporting, and analysis of data for experimental motorist-aid system projects installed under normal construction procedures are eligible for Highway Planning and Research (HP&R) funding when approved as an activity under the HP&R work program (part 420, subpart A, of this chapter).

(g) Active projects which incorporate the modes of operation released from experimental status under this policy issuance but which were approved under the provisions of prior directives shall be completed, including the required research, in accordance with the original directive.

§ 655.705 Design considerations.

(a) *Physical design considerations for roadside call terminals.* (1) Roadside call terminals including their supports shall meet all requirements for roadside appurtenances contained in the design standards referenced in the Federal-Aid Highway Program Manual, volume 6, chapter 2, section 3.

(2) The roadside call terminal shall not be located on the upstream side of its support where the user would have his back to traffic.

(b) *Location design considerations for roadside call terminals.* (1) Roadside call terminals shall be placed on both sides of a highway at each longitudinal location to discourage attempts by stranded motorists to cross the highway. Additional roadside call terminals may be installed in the median if the roadway has three or more lanes.

(2) The roadside call terminals shall be clearly identified, be visible, and not hidden by columns, signs, etc.

(3) Where conditions warrant, roadside call terminals should be placed at rest areas.

(4) Plans should not be approved prior to an appropriate field review of each proposed roadside call terminal site.

§ 655.706 Eligibility.

Evaluation of normal construction projects, in accordance with requirements outlined in § 655.707 is eligible for normal construction funding.

§ 655.707 Evaluation.

(a) The State shall evaluate all motorist-aid system projects installed under normal construction procedures within one year of project acceptance. The evaluation should be designed to determine:

(1) Mechanical effectiveness.

(2) Operational response plan effectiveness.

(3) Maintenance and operation costs.

(4) System usage.

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(b) Requirements for experimental projects:

(1) Experimental motorist-aid system projects shall be limited to a section of one highway covering a distance governed by the capacity and capability of one central control or dispatching agency to respond to the motorists' calls for assistance. This distance may vary but is not expected to exceed 40 miles.

(2) The experimental project evaluation shall include the following:

(i) Stopped vehicle survey.

(ii) Elapsed time required to service the stranded motorist.

(iii) Data on attempts by motorists to get help by means in addition to the roadside call terminals.

(iv) Cost of maintaining and operating the system.

PART 656—CARPOOL AND VANPOOL PROJECTS

Sec.
656.1 Purpose.
656.3 Policy.
656.5 Eligibility.
656.7 Determination of an exception.

AUTHORITY: 23 U.S.C. 146 and 315; sec. 126 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 49 CFR 1.48(b).

SOURCE: 47 FR 43024, Sept. 30, 1982, unless otherwise noted.

§ 656.1 Purpose.

The purpose of this regulation is to prescribe policies and general procedures for administering a program of ridesharing projects using Federal-aid primary, secondary, and urban system funds.

§ 656.3 Policy.

Section 126(d) of the Surface Transportation Assistance Act of 1978 declares that special effort should be made to promote commuter modes of transportation which conserve energy, reduce pollution, and reduce traffic congestion.

§ 656.5 Eligibility.

(a) Projects which promote ridesharing programs need not be located on but must serve a Federal-aid system to be eligible for Federal-aid primary, secondary, or urban system funds depending on the system served. The Federal share payable will be in accordance with the provisions of 23 U.S.C. 120. Except for paragraph (c)(3) of this section, for all purposes of this regulation the term *carpool* includes *vanpool.*

(b) Projects shall not be approved under this regulation if they will have an adverse effect on any mass transportation system.

(c) The following types of projects and work are considered eligible under this program:

(1) Systems, whether manual or computerized, for locating potential participants in carpools and informing them of the oppportunities for participation. Eligible costs for such systems may include costs of use or rental of computer hardware, costs of software, and installation costs (including both labor and other related items).

(2) Specialized procedures to provide carpooling opportunities to elderly or handicapped persons.

(3) The costs of acquiring vanpool vehicles and actual financial losses that occur when the operation of any vanpool is aborted before the scheduled termination date for the reason, concurred in by the State, that its continuation is no longer productive. The cost of acquiring a vanpool vehicle is eligible under the following conditions:

(i) The vanpool vehicle is a four-wheeled vehicle manufactured for use on public highways for transportation of 7—15 passengers (no passenger cars which do not meet the 7—15 criteria and no buses); and

(ii) Provision is made for repayment of the acquisition cost to the project within the passenger-service life of the vehicle. Repayment may be accomplished through the charging of a reasonable user fee based on an estimated number of riders per vehicle and the cost of reasonable vehicle depreciation, operation, and maintenance. Repayment is not required under the following conditions:

(A) When vehicles are purchased as demonstrator vans for use as a marketing device. Vehicles procured for this purpose should be used to promote the vanpool concept among em-

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ployees, employers, and other groups by allowing potential riders and sponsors to examine commuter vans; or

(B) When vehicles are purchased for use on a trial commuting basis to enable people to experience vanpooling first hand. The trial period must be limited to a maximum of 2 months. That part of the user fee normally collected to cover the capital or ownership cost of the van would be eligible for reimbursement as a promotional cost during the limited trial period. As with established vanpool service, all vehicle operating costs must be borne by the user(s) during the trial period.

(4) Work necessary to designate existing highway lanes as preferential carpool lanes or bus and carpool lanes. Eligible work may include preliminary engineering to determine traffic flow and design criteria, signing, pavement markings, traffic control devices, and minor physical modifications to permit the use of designated lanes as preferential carpool lanes or bus and carpool lanes. Such improvements on any public road may be approved if such projects facilitate more efficient use of any Federal-aid highway. Eligible costs may also include costs of initial inspection or monitoring of use, including special equipment, to ensure that the high occupancy vehicle (HOV) lanes designation is effective and that the project is fully developed and operating properly. While no fixed time limit is being arbitrarily prescribed for the inspection and monitoring period, it is intended that this activity be conducted as soon as possible to evaluate the effectiveness of the project and does not extend indefinitely nor become a part of routine facility operations.

(5) Signing of and modifications to existing facilities to provide preferential parking for carpools inside or outside the central business district. Eligible costs may include trail blazers, onsite signs designating highway interchange areas or other existing publicly or privately owned facilities as preferential parking for carpool participants, and initial or renewal costs for leasing parking space or acquisition or easements or restrictions, as, for example, at shopping centers and public or private parking facilities. The lease or acquisition cost may be computed on the demonstrated reduction in the overall number of vehicles using the designated portion of a commercial facility, but not on a reduction of the per-vehicle user charge for parking.

(6) Construction of carpool parking facilities outside the central business district. Eligible costs may include acquisition of land and normal construction activities, including installation of lighting and fencing, trail blazers, onsite signing, and passenger shelters. Such facilities need not be located in conjunction with any existing or planned mass transportation service, but should be designed so that the facility could accommodate mass transportation in the event such service may be developed. Except for the requirement of the availability of mass/public transportation facilities, fringe parking construction under this section shall be subject to the provisions of 23 CFR part 810.106.

(7) Reasonable public information and promotion expenses, including personnel costs, incurred in connection with any of the other eligible items mentioned herein.

§ 656.7 Determination of an exception.

(a) The FHWA has determined under provisions of 23 U.S.C. 146(b) that an exceptional situation exists in regard to the funding of carpools so as to allow the State to contribute as its share of the non-Federal match essential project-related work and services performed by local agencies and private organizations when approved and authorized in accordance with regular Federal-aid procedures. The cost of such work must be properly valued, supportable and verifiable in order for inclusion as an eligible project cost. Examples of such contributed work and services include: public service announcements, computer services, and project-related staff time for administration by employees of public and private organizations.

(b) This determination is based on: (1) The nature of carpool projects to provide a variety of services to the public; (2) the fact that carpool projects are labor intensive and require professional and specialized

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technical skills; (3) the extensive use of joint public and private endeavors; and (4) the fact that project costs involve the acquisition of capital equipment as opposed to construction of fixed items.

(c) This exception is limited to carpool projects and therefore is not applicable to other Federal-aid projects. The exception does not affect or replace the standard Federal-aid funding procedures or real property acquisition procedures and requirements, part 712, The Acquisition Function.

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

Sec.

657.1 Purpose.
657.3 Definition.
657.5 Policy.
657.7 Objective.
657.9 Formulation of a plan for enforcement.
657.11 Evaluation of operations.
657.13 Certification requirement.
657.15 Certification content.
657.17 Certification submittal.
657.19 Effect of failure to certify or to enforce State laws adequately.
657.21 Procedure for reduction of funds.
APPENDIX TO PART 657—GUIDELINES TO BE USED IN DEVELOPING ENFORCEMENT PLANS AND CERTIFICATION EVALUATION

AUTHORITY: Sec. 123, Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 CFR 1.48(b).

SOURCE: 45 FR 52368, Aug. 7, 1980, unless otherwise noted.

§ 657.1 Purpose.

To prescribe requirements for administering a program of vehicle size and weight enforcement on Federal-aid (FA) highways, including the required annual certification by the State.

§ 657.3 Definition.

Enforcing or *enforcement* means all actions by the State to obtain compliance with size and weight requirements by all vehicles operating on the FA Interstate, primary, urban, and secondary systems.

§ 657.5 Policy.

Federal Highway Administration (FHWA) policy is that each State enforce vehicle size and weight laws to assure that violations are discouraged and that vehicles traversing the highway system do not exceed the limits specified by law. These size and weight limits are based upon design specifications and safety considerations, and enforcement shall be developed and maintained both to prevent premature deterioration of the highway pavement and structures and to provide a safe driving environment.

§ 657.7 Objective.

The objective of this regulation is the development and operation by each State of an enforcement process which identifies vehicles of excessive size and weight and provides a systematic approach to eliminate violations and thus improve conditions.

§ 657.9 Formulation of a plan for enforcement.

(a) Each State shall develop a plan for the maintenance of an effective enforcement process. The plan shall describe the procedures, resources, and facilities which the State intends to devote to the enforcement of its vehicle size and weight laws. Each State plan must be accepted by the FHWA and will then serve as a basis by which the annual certification of enforcement will be judged for adequacy.

(b) The plan shall discuss the following subjects:

(1) *Facilities and resources.* (i) No program shall be approved which does not utilize a combination of at least two of the following listed devices to deter evasion of size and weight measurement in sufficient quantity to cover the FA system: fixed platform scales; portable wheel weigher scales; semi-portable or ramp scales; WIM equipment.

(ii) Staff assigned to the program, identified by specific agency. Where more than one State agency has weight enforcement responsibility, the lead agency should be indicated.

(2) *Practices and procedures.* (i) Proposed plan of operation, including geo-

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graphical coverage and hours of operation in general terms.

(ii) Policy and practices with respect to overweight violators, including off-loading requirements for divisible loads. In those States in which off-loading is mandatory by law, an administrative variance from the legal requirement shall be fully explained. In those States in which off-loading is permissive administrative guidelines shall be included.

(iii) Policy and practices with respect to penalties, including those for repeated violations. Administrative directives, booklets or other written criteria shall be made part of the plan submission.

(iv) Policy and practices with respect to special permits for overweight. Administrative directives, booklets or other written criteria shall be made part of the plan submission.

(3) *Updating.* Modification and/or additions to the plan based on experience and new developments in the enforcement program. It is recognized that the plan is not static and that changes may be required to meet changing needs.

§ 657.11 Evaluation of operations.

(a) The State shall submit its initial plan to the FHWA Division Administrator on or before November 1, 1980. Following consultation with the FHWA Regional Administrator, the State will be notified of its acceptance or rejection. The plan shall be updated annually thereafter, preferably on or before July 1, but an alternate date acceptable to both the FHWA and the State, may be chosen if a State's legislative or budgetary cycle is not consonant with July 1. In any event, a State must have an approved plan in effect by October 1 of each year. Failure of a State to submit or update a plan will be deemed to be a failure to certify in accordance with § 657.13.

(b) The FHWA division office shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation, and of any needed changes either in the plan itself or in its implementation. Copies of the evaluation report and subsequent modifications resulting from the evaluation shall be forwarded through the region to the Washington Headquarters.

§ 657.13 Certification requirement.

Each State shall certify to the Federal Highway Administrator before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weight permitted on the FA primary, secondary, and urban systems, including the Interstate System, in accordance with 23 U.S.C. 127. The certification shall be supported by information on activities and results achieved during the preceding 12-month period ending on September 30.

§ 657.15 Certification content.

The certification shall consist of the following elements and each element shall be addressed even though the response is negative:

(a) A statement by the Governor of the State, or an official designated by the Governor, that the size and weight laws and regulations in the State governing use of the Interstate System conform to 23 U.S.C. 127.

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the FA Interstate, primary, urban, and secondary systems. Urban areas not subject to State jurisdiction shall be identified and the statement shall address total FA mileage involved and an analysis of enforcement efforts in such areas.

(c) The certifying statement required by paragraphs (a) and (b) of this section shall be worded as follows: I (name of certifying official), (position title), of the State of , do hereby certify that all State laws and regulations are being enforced on the FA primary, urban, and secondary systems and the Interstate System in accordance with 23 U.S.C. 127.

(d) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made. Those laws and regulations pertaining to special permits and

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penalties shall be specifically identified and analyzed in accordance with section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599).

(e) A report of State size and weight enforcement efforts during the period covered by the certification which addresses the following:

(1) Actual operations as compared with those forecast by the plan submitted earlier, with particular attention to changes in or deviations from the operations proposed.

(2) Impacts of the process as actually applied, in terms of changes in the number of oversize and/or overweight vehicles.

(3) *Measures of activity*—(i) *Vehicles weighed.* Separate totals shall be reported for the annual number of vehicles weighed on fixed scales, on semi-portable scales, on portable scales, and on WIM when used for enforcement.

(ii) Penalties reported shall include citations issued, civil assessments, and incidences of load shifting or off-loading of excess weight categorized as follows: violations of axle and/or gross vehicle weights, or violations resulting from application of the bridge formula.

(iii) *Permits.* The number of permits issued for *overweight* loads shall be reported. The reported numbers shall specify permits for divisible and non-divisible loads and whether issued on a trip or annual basis. Permits issued for excess height, length, or width need not be reported except where issued for the overwidth movement of a divisible load.

§ 657.17 Certification submittal.

(a) The Governor, or an official designated by the Governor, shall each year submit one copy of the certification to the FHWA Division Administrator prior to January 1.

(b) The Division office shall forward the original certification to the Office of the Chief Counsel and one copy to the Associate Administrator for Motor Carriers. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

[45 FR 52368, Aug. 7, 1980, as amended at 53 FR 12766, Apr. 19, 1988]

§ 657.19 Effect of failure to certify or to enforce State laws adequately.

Beginning January 1, 1981, if a State fails to certify as required by this regulation or if the Secretary determines that a State is not adequately enforcing all State laws respecting maximum vehicle sizes and weights on FA highways notwithstanding the State's certification, the FA highway funds apportioned to the State for the next fiscal year shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104, and/or by the amount required pursuant to 23 U.S.C. 127.

§ 657.21 Procedure for reduction of funds.

(a) If it appears to the Federal Highway Administrator that a State has not submitted a certification conforming to the requirements of this regulation, or that the State is not adequately enforcing State laws respecting maximum vehicle size and weight, including laws applicable to vehicles using the Interstate System with weights or widths in excess of those provided under 23 U.S.C. 127, the Federal Highway Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the State that it may, within 30 days from the date of the notice, request a hearing to show cause why it should not be found in nonconformity. If the State informs the Administrator before the end of this 30-day period that it wishes to attempt to resolve the matter informally, the Administrator may extend the time for requesting a hearing. In the event of a request for informal resolution, the State and the Administrator (or designee) shall promptly schedule a meeting to resolve the matter.

(b) In all instances where the State proceeds on the basis of informal resolution, a transcript of the conference will be made and furnished to the State by the FHWA.

(1) The State may offer any information which it considers helpful to a

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resolution of the matter, and the scope of review at the conference will include, but not be limited to, legislative actions, including those proposed to remedy deficiencies, budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the State into compliance.

(2) The information produced at the conference may constitute an explanation and offer of settlement and the Administrator will make a determination on the basis of the certification, record of the conference, and other information submitted by the State. The Administrator's final decision together with a copy of the transcript of the conference will be furnished to the State.

(3) If the Administrator does not accept an offer of settlement made pursuant to paragraph (b)(2) of this section, the State retains the right to request a hearing on the record pursuant to paragraph (d) of this section, except in the case of a violation of section 127.

(c) If the State does not request a hearing in a timely fashion as provided in paragraph (a) of this section, the Federal Highway Administrator shall forward the proposed determination of nonconformity to the Secretary. Upon approval of the proposed determination by the Secretary, the fund reduction specified by § 657.19 shall be effected.

(d) If the State requests a hearing, the Secretary shall expeditiously convene a hearing on the record, which shall be conducted according to the provisions of the Administrative Procedure Act, 5 U.S.C. 555 *et seq.* Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this regulation. If the Secretary determines that the State is in nonconformity, the fund reduction specified by section 567.19 shall be effected.

(e) The Secretary may reserve 10 percent of a State's apportionment of funds under 23 U.S.C. 104 pending a final administrative determination under this regulation to prevent the apportionment to the State of funds which would be affected by a determination of nonconformity.

(f) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible States one year from the date of this determination, unless before this time the Secretary determines, on the basis of information submitted by the State and the FHWA, that the State has come into conformity with this regulation. If the Secretary determines that the State has come into conformity, the withheld funds shall be released to the State.

(g) The reapportionment of funds under paragraph (e) of this section shall be stayed during the pendency of any judicial review of the Secretary's final administrative determination of nonconformity.

APPENDIX TO PART 657—GUIDELINES TO BE USED IN DEVELOPING ENFORCEMENT PLANS AND CERTIFICATION EVALUATION

A. Facilities and Equipment

1. Permanent Scales
a. Number
b. Location (a map appropriately coded is suggested)
c. Public-private (if any)
2. Weigh-in-motion (WIM)
a. Number
b. Location (notation on above map is suggested)
3. Semi-portable scales
a. Type and number
b. If used in sets, the number comprising a set
4. Portable Scales
a. Type and number
b. If used in sets, the number comprising a set

B. Resources

1. Agencies involved (i.e., highway agency, State police, motor vehicle department, etc.)
2. Personnel—numbers from respective agencies assigned to weight enforcement
3. Funding
a. Facilities
b. Personnel

C. Practices

1. Proposed schedule of operation of fixed scale locations in general terms
2. Proposed schedule of deployment of portable scale equipment in general terms
3. Proposed schedule of deployment of semi-portable equipment in general terms

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4. Strategy for prevention of bypassing of fixed weighing facility location
5. Proposed action for implementation of off-loading, if applicable

D. Goals

1. Short term--the year beginning October 1 following submission of a vehicle size and weight enforcement plan
2. Medium term—2-4 years after submission of the enforcement plan
3. Long term—5 years beyond the submission of the enforcement plan
4. Provision for annual review and update of vehicle size and weight enforcement plan

E. Evaluation

The evaluation of an existing plan, in comparison to goals for strengthening the enforcement program, is a difficult task, especially since there is very limited experience nationwide.

The FHWA plans to approach this objective through a continued cooperative effort with State and other enforcement agencies by gathering useful information and experience on elements of enforcement practices that produce positive results.

It is not considered practicable at this time to establish objective minimums, such as the number of vehicles to be weighed by each State, as a requirement for satisfactory compliance. However, the States will want to know as many specifics as possible about what measuring tools will be used to evaluate their annual certifications for adequacy.

The above discussion goes to the heart of the question concerning numerical criteria. The assumption that a certain number of weighings will provide a maximum or even satisfactory deterrent is not supportable. The enforcement of vehicle size and weight laws requires that vehicles be weighed but it does not logically follow that the more vehicles weighed, the more effective the enforcement program, especially if the vehicles are weighed at a limited number of fixed locations. A "numbers game" does not necessarily provide a deterrent to deliberate overloading. Consistent, vigorous enforcement activities, the certainty of apprehension and of penalty, the adequacy of the penalty, even the publicity given these factors, may be greater deterrents than the number of weighings alone.

In recognizing that all States are unique in character, there are some similarities between certain States and useful perspectives may be obtained by relating their program elements. Some comparative factors are:

1. Truck registration (excluding pickups and panels)
2. Population
3. Average Daily Traffic (ADT) for trucks on FA highways
4. To total mileage of Federal-aid highways
5. Geographic location of the State
6. Annual truck miles traveled in State
7. Number of truck terminals (over 6 doors)
8. Vehicle miles of intrastate truck traffic

Quantities relating to the above items can become factors that in the aggregate are descriptive of a State's characteristics and can identify States that are similar from a trucking operation viewpoint. This is especially applicable for States within the same area.

After States with similar truck traffic operations have been identified in a regional area, another important variable must be considered: the type of weighing equipment that has been or is proposed for predominant use in the States. When data become available on the number of trucks weighed by each type of scale (fixed, portable, semi-portable, etc.) some indicators will be developed to relate one State's effort to those of other States. The measures of activity that are a part of each certification submitted will provide a basis for the development of more precise numerical criteria by which an enforcement plan and its activities can be judged for adequacy.

Previous certifications have provided information from which the following gross scale capabilities have been derived.

Potential Weighing Capacities

1. Permanent scales 60 veh/hr.
2. Weigh-in-motion scales 100 veh/hr.
3. Semi-portable scales 25 veh/hr.
4. Portable scales 3 veh/hr.

To meet the mandates of Federal and other laws regarding truck size and weight enforcement, the FHWA desires to become a resource for all States in achieving a successful exchange of useful information. Some States are more advanced in their enforcement activities. Some have special experience with portable, semi-portable, fixed, or weighing-in-motion devices. Others have operated permanent scales in combination with concentrated safety inspection programs. The FHWA is interested in information on individual State experiences in these specialized areas as part of initial plan submissions. If such information has recently been furnished to the Washington Headquarters, an appropriate cross reference should be included on the submission.

It is the policy of the FHWA to avoid red tape, and information volunteered by the States will be of assistance in meeting many needs. The ultimate goal in developing information through the evaluation process is to assemble criteria for a model enforcement program.

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PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

Sec.

658.1 Purpose.
658.3 Policy statement.
658.5 Definitions.
658.7 Applicability.
658.9 National Network criteria.
658.11 Additions, deletions, exceptions, and restrictions.
658.13 Length.
658.15 Width.
658.17 Weight.
658.19 Reasonable access.
658.21 Identification of National Network.
APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES
APPENDIX B TO PART 658—GRANDFATHERED SEMITRAILER LENGTHS

AUTHORITY: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313; 49 U.S.C. App. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

SOURCE: 49 FR 23315, June 5, 1984, unless otherwise noted.

§ 658.1 Purpose.

The purpose of this part is to identify a National Network of highways available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, 96 Stat. 2097), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829, and to prescribe national policies that govern truck size and weight.

[53 FR 12148, Apr. 13, 1988]

§ 658.3 Policy statement.

The Federal Highway Administration's (FHWA) policy is to provide a safe and efficient National Network of highways that can safely and efficiently accommodate the large vehicles authorized by the STAA. This network includes the Interstate System plus other qualifying Federal-aid Primary System Highways.

§ 658.5 Definitions.

(a) *Bridge Gross Weight Formula.* The standard specifying the relationship between axle (or groups of axles) spacing and the gross weight that (those) axle(s) may carry expressed by the formula:

$$W=500\left(\frac{LN}{N-1}+12N+36\right)$$

where W=overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L=distance in feet between the extreme of any group of two or more consecutive axles, and N=number of axles in the group under consideration.

(b) *Commercial Motor Vehicle.* For purposes of this regulation a motor vehicle designed or regularly used for carrying freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools.

(c) *Federal-Aid Primary System.* The Federal-aid Highway System of rural arterials and their extensions into or through urban areas as described in subsection (b) of section 103 of Title 23, U.S.C.

(d) *Interstate System.* The National System of Interstate and Defense Highways described in sections 103(e) and 139(a) of Title 23, U.S.C. For the purpose of this regulation this system includes toll roads designated as Interstate.

(e) *Length Exclusive Devices.* For purposes of this regulation all appurtenances at the front or rear of a commercial motor vehicle semitrailer, or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer. No device excluded from length determination shall be designed or used for carrying cargo.

(f) *National Network.* The composite of the individual network of highways from each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under § 658.11(f) or deleted under § 658.11(d), and those portions of the Federal-Aid Primary System set out by the FHWA in the appendix to this part.

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(g) *Safety Devices—Width Exclusion.* Federally approved safety devices accorded width exclusion status include rear-view mirrors, turn signal lamps, hand-holds for cab entry/egress and splash and spray suppressant devices. Although not normally considered a safety device, load-induced tire bulge is also excluded from consideration in determining vehicle width.

(h) *Single Axle Weight.* The total weight transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. The Federal single axle weight limit on the Interstate System is 20,000 pounds.

(i) *Special Mobile Equipment.* Every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including military equipment, farm equipment, implements of husbandry, road construction or maintenance machinery, and emergency apparatus which includes fire and police emergency equipment. This list is partial and not exclusive of such other vehicles as may fall within the general terms of this definition.

(j) *Tandem Axle Weight.* The total weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle. The Federal tandem axle weight limit on the Interstate System is 34,000 pounds.

(k) *Tractor* or *Truck Tractor.* The noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

(l) [Reserved]

(m) *Automobile Transporters.* Any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles.

(n) *Stinger-steered combination.* A truck tractor semitrailer wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit.

(o) *Truck-tractor Semitrailer-Semitrailer.* In a truck-tractor semitrailer-semitrailer combination vehicle, the two trailing units are connected with a "B-train" assembly. The B-train assembly is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth wheel connection point for the second semitrailer. This combination has one less articulation point than the conventional "A dolly" connected truck-tractor semitrailer-trailer combination.

(p) *Boat transporters.* Any vehicle combination designed and used specifically to transport assembled boats and boat hulls. Boats may be partially disassembled to facilitate transporting.

(q) *Truck-trailer boat transporter.* A boat transporter combination consisting of a straight truck towing a trailer using typically a ball and socket connection. The trailer axle(s) is located substantially at the trailer center of gravity (rather than the rear of the trailer) but so as to maintain a downward force on the trailer tongue.

(r) *Terminal.* The term *terminal* as used in this regulation means, at a minimum, any location where:

(1) Freight either originates, terminates, or is handled in the transportation process; or

(2) Commercial motor carriers maintain operating facilities.

(s) *Saddlemount combination.* A saddlemount combination is a combination of vehicles in which a truck or truck tractor tows one or more trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The saddle is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. When two vehicles are towed in this manner the combination is called a double saddlemount combination. When three vehicles are towed in this manner, the combination is called a triple saddlemount combination.

(t) *Fullmount.* A fullmount is a smaller vehicle mounted completely

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on the frame of either the first or last vehicle in a saddlemount combination.

[49 FR 23315, June 5, 1984, as amended at 53 FR 2597, Jan. 29, 1988; 53 FR 12148, Apr. 13, 1988; 53 FR 25485, July 7, 1988; 53 FR 48636, Dec. 2, 1988; 55 FR 22762, June 1, 1990; 55 FR 32399, Aug. 9, 1990]

EDITORIAL NOTE: For a notice document interpreting paragraphs (e) and (g) of § 658.5 see 52 FR 7834, Mar. 13, 1987.

§ 658.7 Applicability.

Except as limited in § 658.17(a) the provisions of this part are applicable to the National Network and reasonable access thereto. However, nothing in this regulation shall be construed to prevent any State from applying any weight and size limits to other highways, except when such limits would deny reasonable access to the National Network.

§ 658.9 National Network criteria.

(a) The National Network listed in the appendix to this part is available for use by commerical motor vehicles of the dimensions and configurations described in §§ 658.13 and 658.15.

(b) For those States with detailed lists of individual routes in the appendix, the routes have been designated on the basis of their general adherence to the following criteria.

(1) The route is a geometrically typical component of the Federal-Aid Primary System, serving to link principal cities and densely developed portions of the States.

(2) The route is a high volume route utilized extensively by large vehicles for interstate commerce.

(3) The route does not have any restrictions precluding use by conventional combination vehicles.

(4) The route has adequate geometrics to support safe operations, considering sight distance, severity and length of grades, pavement width, horizontal curvature, shoulder width, bridge clearances and load limits, traffic volumes and vehicle mix, and intersection geometry.

(5) The route consists of lanes designed to be a width of 12 feet or more or is otherwise consistent with highway safety.

(6) The route does not have any unusual characteristics causing current or anticipated safety problems.

(c) For those States where State law provides that STAA authorized vehicles may use all or most of the Federal-Aid Primary system, the National Network is no more restrictive than such law. The appendix contains a narrative summary of the National Network in those States.

[49 FR 23315, June 5, 1984, as amended at 53 FR 12148, Apr. 13, 1988]

§ 658.11 Additions, deletions, exceptions, and restrictions.

To ensure that the National Network remains substantially intact, FHWA retains the authority to rule upon all requested additions to and deletions from the National Network as well as requests for the imposition of certain restrictions. FHWA approval or disapproval will constitute the final decision of the U.S. Department of Transportation.

(a) *Additions.* (1) Requests for additions to the National Network, including justification, shall have the endorsement of the Governor or the Governor's authorized representative, and be submitted in writing to the appropriate FHWA Division Office. Proposals for addition of routes to the National Network shall be accompanied by an analysis of suitability based on the criteria in § 658.9.

(2) Proposals for additions that meet the criteria of § 658.9 and have the endorsement of the Governor or the Governor's authorized representative will be published in the FEDERAL REGISTER for public comment as a notice of proposed rulemaking (NPRM), and if found acceptable, as a final rule.

(b) *Deletions—Federal-aid primary—other than interstate.* Changed conditions or additional information may require the deletion of a designated route or a portion thereof. The deletion of any route or route segment shall require FHWA approval. Requests for deletion of routes from the National Network, including the reason(s) for the deletion, shall be submitted in writing to the appropriate FHWA Division Office. These requests shall be assessed on the basis of

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the criteria of § 658.9. FHWA proposed deletions will be published in the FEDERAL REGISTER as a Notice of Proposed Rulemaking (NPRM).

(c) *Requests for deletion—Federal-aid primary—other than interstate.* Requests for deletion should include the following information, where appropriate:

(1) Did the route segment prior to designation carry combination vehicles or 102-inch buses?

(2) Were truck restrictions in effect on the segment on January 6, 1983? If so, what types of restrictions?

(3) What is the safety record of the segment, including current or anticipated safety problems? Specifically, is the route experiencing above normal accident rates and/or accident severities? Does analysis of the accident problem indicate that the addition of larger trucks have aggravated existing accident problems?

(4) What are the geometric, structural or traffic operations features that might preclude safe, efficient operation? Specifically describe lane widths, sight distance, severity and length of grades, horizontal curvature, shoulder width, narrow bridges, bridge clearances and load limits, traffic volumes and vehicle mix, intersection geometrics and vulnerability of roadside hardware.

(5) Is there a reasonable alternate route available?

(6) Are there operational restrictions that might be implemented in lieu of deletion?

(d) *Deletions and use restrictions—Federal-aid interstate.* (1) The deletion of, or imposition of use restrictions on, any specific segment of the Interstate Highway System on the National Network, except as otherwise provided in this part, must be approved by the FHWA. Such action will be initiated on the FHWA's own initiative or on the request of the Governor or the Governor's authorized representative of the State in which the Interstate segment is located. Requests from the Governor or the Governor's authorized representative shall be submitted along with justification for the deletion or restriction, in writing, to the appropriate FHWA Division Office for transmittal to Washington Headquarters.

(2) The justification accompanying a request shall be based on the following:

(i) Analysis of evidence of safety problems supporting the deletion or restriction as identified in § 658.11(c).

(ii) Analysis of the impact on interstate commerce.

(iii) Analysis and recommendation of any alternative routes that can safely accommodate commercial motor vehicles of the dimensions and configurations described in §§ 658.13 and 658.15 and serve the area in which such segment is located.

(iv) Evidence of consultation with the local governments in which the segment is located as well as the Governor or the Governor's authorized representative of any adjacent State that might be directly affected by such a deletion or restriction.

(3) Actions to ban all commercial vehicles on portions of the Interstate System not excepted under § 658.11(f) are considered deletions subject to the requirements of subsection (d) of this section.

(4) Reasonable restrictions on the use of Interstate routes on the National Network by STAA-authorized vehicles related to specific travel lanes of multi-lane facilities, construction zones, adverse weather conditions or structural or clearance deficiencies are not subject to the requirements of paragraph (d) of this section.

(5) Proposed deletions or restrictions will be published in the FEDERAL REGISTER as an NPRM, except in the case of an emergency deletion as prescribed in § 658.11(e). The FHWA will consider the factors set out in paragraph (d)(2) of this section and the comments of interested parties. Any approval of deletion or restriction will be published as a final rule. A deletion of or restriction on a segment for reasons ascribable to dimensions of commercial motor vehicles described in either § 658.13 or § 658.15 shall result in a deletion or restriction for the purposes of both §§ 658.13 and 658.15.

(e) *Emergency deletions.* FHWA has the authority to delete any route from the National Network, on an emergency basis, for safety considerations.

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Emergency deletions are not considered final, and will be published in the FEDERAL REGISTER for notice and comment.

(f) *Exceptions.* Those portions of the Interstate System which were open to traffic and on which all commercial motor vehicles were banned on January 6, 1983, are not included in the National Network.

(g) *Restrictions—Federal-aid primary—other than interstate.* (1) Reasonable restrictions on the use of non-Interstate Federal-aid Primary routes on the National Network by STAA-authorized vehicles may be imposed during certain peak hours of travel or on specific travel lanes of multi-lane facilities. Restrictions related to construction zones, seasonal operation, adverse weather conditions or structural or clearance deficiencies may be imposed.

(2) All restrictions on the use of the National Network based on hours of use by vehicles authorized by the STAA require prior FHWA approval. Requests for such restrictions on the National Network shall be submitted in writing to the appropriate FHWA Division Office. Approval of requests for restrictions will be contingent on the ability to justify significant negative impact on safety, the environment and/or operational efficiency.

[49 FR 23315, June 5, 1984, as amended at 53 FR 12148, Apr. 13, 1988]

§ 658.13 Length.

(a) The length provisions of the STAA apply only to the following types of vehicle combinations:

(1) Truck tractor-semitrailer

(2) Truck tractor-semitrailer-trailer.

The length provisions apply only when these combinations are in use on the National Network or in transit between these highways and terminals or service locations pursuant to § 658.19.

(b) The length provisions referred to in paragraph (a) of this section include the following:

(1) No State shall impose a length limitation of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination.

(2) No State shall impose a length limitation of less than 28 feet on any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination.

(3) Except as noted in paragraphs (c)(1) and (2) of this section, no State shall impose an overall length limitation on commercial vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

(4) No State shall prohibit commercial motor vehicles operating in truck tractor-semitrailer-trailer combinations.

(5) No State shall prohibit the operation of semitrailers or trailers which are 28½ feet long when operating in a truck tractor-semitrailer-trailer combination if such a trailer or semitrailer was in actual and lawful operation on December 1, 1982, and such combination had an overall length not exceeding 65 feet.

(c) State maximum length limits for semitrailers operating in a truck tractor-semitrailer combination and semitrailers and trailers operating in a truck tractor-semitrailer-trailer combination are subject to the following:

(1) No State shall prohibit the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982, as set out in appendix B of this part.

(2) If on December 1, 1982, State length limitations on a semitrailer were described in terms of the distance from the kingpin to rearmost axle, or end of semitrailer, the operation of any semitrailer that complies with that limitation must be allowed.

(d) *Specialized equipment*—(1) *Automobile transporters.* (i) Automobile transporters are considered to be specialized equipment. As provided in § 658.5(k), automobile transporters may carry vehicles on the power unit behind the cab and on an over-cab rack. No State shall impose an overall length limitation of less than 65 feet on traditional automobile transporters (5th wheel located on tractor frame over rear axle(s)), including "low boys," or less than 75 feet on stinger-steered automobile transporters. Paragraph (c) requires the States to allow operation of vehicles with the dimen-

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sions that were legal in the State on December 1, 1982.

(ii) All length provisions regarding automobile transporters are exclusive of front and rear overhang. Further, no State shall impose a front overhang limitation of less than three (3) feet nor a rearmost overhand limitation of less than four (4) feet.

(iii) Drive-away saddlemount vehicle transporter combinations and driveaway saddlemount with fullmount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less than 75 feet on such combinations. This provision applies to saddlemount combinations with up to three saddlemounted vehicles. Such combinations may include one fullmount. Saddlemount combinations must also comply with the applicable safety regulations at 49 CFR 393.71.

(2) *Boat transporters.* (i) Boat transporters are considered to be specialized equipment. As provided for automobile transporters in § 658.5(k), boat transporters may carry boats on the power unit so long as the length and width restrictions of the vehicles and load are not exceeded. No State shall impose an overall length limitation of less than 65 feet on traditional boat transporters (fifth wheel located on tractor frame over rear axle(s), including "low boys," or less than 75 feet on stinger-steered boat transporters. In addition, no State shall impose an overall length limitation of less than 65 feet on truck-trailer boat transporters. Paragraph (c) of this section requires the States to allow operation of vehicles with the dimensions that were legal in the State on December 1, 1982.

(ii) All length provisions regarding boat transporters are exclusive of front and rear overhang. Further, no State shall impose a front overhang limitation of less than three (3) feet nor a rearmost overhang limitation of less than four (4) feet.

(3) *Truck-tractor semitrailer-semitrailer.* (i) Truck-tractor semitrailer-semitrailer combination vehicles are considered to be specialized equipment. No State shall impose a length limitation of less than 28 feet on any semitrailer or 28½ feet if the semitrailer was in legal operation on December 1, 1982, operating in a truck-tractor semitrailer-semitrailer combination. No State shall impose an overall length limitation on a truck-tractor semitrailer-semitrailer combination when each semitrailer length is 28 feet, or 28½ feet if grandfathered.

(ii) The B-train assembly is excluded from the measurement of trailer length when used between the first and second trailer of a truck-tractor semitrailer-semitrailer combination vehicle. However, when there is no semitrailer mounted to the B-train assembly, it will be included in the length measurement of the semitrailer, the length limitation in this case being 48 feet, or longer if grandfathered.

(e) The length limitations described in this section shall not include the length exclusive devices defined in § 658.5(e), or which the Secretary may interpret as necessary for safe and efficient operation of commercial motor vehicles, except that no excluded device shall be designed or used for carrying cargo.

(f) A truck tractor containing a dromedary box, deck, or plate in legal operation on December 1, 1982, shall be permitted to continue to operate, notwithstanding its cargo carrying capacity, throughout its useful life. Proof of such legal operation on December 1, 1982, shall rest upon the operator of the equipment.

[49 FR 23315, June 5, 1984, as amended at 53 FR 2597, 2599, Jan. 29, 1988; 53 FR 25485, July 7, 1988; 53 FR 48636, Dec. 2, 1988; 55 FR 4998, Feb. 13, 1990; 55 FR 32399, Aug. 9, 1990; 56 FR 4165, Feb. 1, 1991]

EFFECTIVE DATE NOTE: At 56 FR 4165, Feb. 1, 1991, § 658.13 was amended by designating the current text of paragraph (f) as paragraph (f)(1) and by adding paragraph (f)(2), effective through August 1, 1991. For the convenience of the user, the text of paragraph (f)(2) is set forth as follows:

§ 658.13 Length.

* * * * *

(f)(1) * * *

(2) A truck tractor containing a dromedary box, deck, or plate and operating as part of a truck tractor semitrailer combination may operate on the National Network until August 1, 1991 provided:

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(i) The dromedary box, deck, or plate is not more than 65 inches in length; and

(ii) The combination vehicle pulled by the truck tractor containing the dromedary box, deck, or plate is transporting Class A or Class B explosives for the U.S. Department of Defense.

§ 658.15 Width.

(a) No State shall impose a width limitation of more or less than 102 inches, or its approximate metric equivalent, 2.6 meters (102.36 inches) on a vehicle operating on the National Network, except for the State of Hawaii, which is allowed to keep the State's 108-inch width maximum by virtue of section 416(a) of the STAA.

(b) The provisions of paragraph (a) of this section do not apply to special mobile equipment as defined in § 658.5(i).

(c) Safety devices, as defined in § 658.5(g) or as determined by the States as necessary for the safe and efficient operation of motor vehicles shall not be included in the calculation of width. Safety devices not specifically enumerated in § 658.5(g) may not extend beyond 3 inches on each side of a vehicle. No device included in this subsection shall have, by its design or use, the capability to carry cargo.

(d) Notwithstanding the provisions of this section or any other provision of law, a State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width.

§ 658.17 Weight.

(a) The provisions of the section are applicable to the National System of Interstate and Defense Highways and reasonable access thereto.

(b) The maximum gross vehicle weight shall be 80,000 pounds except where lower gross vehicle weight is dictated by the bridge formula.

(c) The maximum gross weight upon any one axle, including any one axle of a group of axles, or a vehicle is 20,000 pounds.

(d) The maximum gross weight on tandem axles is 34,000 pounds.

(e) No vehicle or combination of vehicles shall be moved or operated on any Interstate highway when the gross weight on two or more consecutive axles exceeds the limitations prescribed by the following formula, referred to as the Bridge Gross Weight Formula:

$$W = 500\frac{LN}{N-1} + 12N + 36$$

except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axle is 36 feet or more. In no case shall the total gross weight of a vehicle exceed 80,000 pounds.

(f) The weights in paragraphs (b), (c), (d), and (e) of this section shall be inclusive of all tolerances, enforcement or otherwise, with the exception of a scale allowance factor when using portable scales (wheel-load weighers). The current accuracy of such sales is generally within 2 or 3 percent of actual weight, but in no case should an allowance in excess of 5 percent be applied. Penalty or fine schedules which impose no fine up to a specified threshold, i.e., 1,000 pounds, will be considered as tolerance provisions not authorized by 23 U.S.C. 127.

(g) States may issue special permits without regard to the axle, gross, or formula requirements for vehicles and loads which cannot be dismantled or divided (non-divisible loads) without incurring substantial cost or delay. All permits for vehicles carrying divisible loads in excess of 80,000 pounds must conform to either Federal or grandfathered axle and bridge spacing requirements as approved by the FHWA.

(h) The provisions of paragraphs (b), (c), and (d) of this section shall not apply to single, or tandem axle weights, or gross weights legally authorized under State law on July 1, 1956. The group of axles requirements established in this section shall not apply to vehicles legally grandfather under State groups of axles tables or formulas on January 4, 1975.

§ 658.19 Reasonable access.

(a) No State may enact or enforce any law denying reasonable access to vehicles with dimensions authorized

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by the STAA between the National Network and terminals and facilities for food, fuel, repairs, and rest. In addition, no State may enact or enforce any law denying reasonable access between the National Network and points of loading and unloading to household goods carriers and any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 feet (28½ feet where allowed pursuant to § 658.13(b)(5)) and which generally operates as part of a vehicle combination described in §§ 658.13(b)(5) and 658.15(a).

(b) All States shall make available to commercial motor vehicle operators information regarding their reasonable access provisions to and from the National Network.

(c) Nothing in this section shall be construed as preventing any State or local government from imposing any reasonable restriction, based on safety considerations, on access to points of loading and unloading by any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28½ feet and which generally operates as part of a vehicle combination described in §§ 658.13(b)(5) and 658.15(a).

(d) No State may enact or enforce any law denying access within 1 road-mile from the National Network using the most reasonable and practicable route available except for specific safety reasons on individual routes.

(e) Approval of access for specific vehicles on any individual route applies to all vehicles of the same type regardless of ownership. Distinctions between vehicle types shall be based only on significant, substantial differences in their operating characteristics.

(f) Blanket restrictions on 102-inch wide vehicles may not be imposed.

(g) Vehicle dimension limits shall not be more restrictive than Federal requirements.

(h) States shall ensure compliance with the requirements of this section for roads under the jurisdiction of local units of government.

(i)(1) Except in those States in which State law authorizes the operation of STAA-dimensioned vehicles on all public roads and highways, all States shall have an access review process that provides for the review of requests for access from the National Network.

(2) State access review processes shall provide for:

(i) One or more of the following:

(A) An analysis of the proposed access routes using observations or other data obtained from the operation of test vehicles over the routes;

(B) An analysis of the proposed access routes by application of vehicle templates to plans of the routes;

(C) A general provision for allowing access, without requiring a request, for commercial motor vehicles with semitrailers with a kingpin distance of 41 feet or less (measured from the kingpin to the center of the rear axle, if single, or the center of a group of rear axles). State safety analyses may be conducted on individual routes if warranted; and

(ii) All of the following:

(A) The denial of access to terminals and services only on the basis of safety and engineering analysis of the access route.

(B) The automatic approval of an access request if not acted upon within 90 days of receipt by the State. This provision shall become effective no later than 12 months following the effective date of this rule unless an extension is requested by the State and approved by FHWA.

(C) The denial of access for any 102-inch wide vehicles only on the basis of the characteristics of specific routes, in particular significant deficiencies in lane width.

(j)(1) Each State shall submit its access provisions to FHWA for approval within 6 months after June 1, 1990. In those States in which State law authorizes the operation of STAA-dimensioned vehicles on all public roads and highways, no submission or approval under this paragraph is required. If, in the future, such a State changes its authorizing legislation and restricts the operation of STAA-dimensioned vehicles, then compliance with these provisions will be necessary.

(2) The FHWA will review the access provisions as submitted by each State subject to the provisions in paragraph

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(j)(1) and approve those that are in compliance with the requirements of this section. The FHWA may, at a State's request, approve State provisions that differ from the requirements of this section if FHWA determines that they provide reasonable access for STAA-dimensioned vehicles and do not impose an unreasonable burden on motor freight carriers, shippers and receivers and service facility operators.

(3) Any State that does not have FHWA approved access provisions in effect within 1 year after June 1, 1990 shall follow the requirements and the criteria set forth in this section and section 658.5 and 658.19 for determining access for STAA-dimensioned vehicles to terminals and services. The FHWA may approve a State's request for a time extension if it is received by FHWA at least 1 month before the end of the 1 year period.

[53 FR 12149, Apr. 13, 1988, as amended at 55 FR 22763, June 1, 1990]

§ 658.21 Identification of National Network.

(a) To identify the National Network, a State may sign the routes or provide maps of lists of highways describing the National Network.

(b) Exceptional local conditions on the National Network shall be signed. All signs shall conform to the Manual on Uniform Traffic Control Devices. Exceptional conditions shall include but not be limited to:

(1) Operational restrictions designed to maximize the efficiency of the total traffic flow, such as time of day prohibitions, or lane use controls.

(2) Geometric and structural restrictions, such as vertical clearances, posted weight limits on bridges, or restrictions caused by construction operations.

(3) Detours from urban Interstate routes to bypass of circumferential routes for commercial motor vehicles not destined for the urban area to be bypassed.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
Alabama		
US 43	I-65 N. of Mobile	Sunflower.
US 43	AL 5 near Russellville.	TN State Line.
US 72	MS State Line	CR 33 Hollywood.
US 72 Alt	US 72 Tuscumbia	US 72/231/431 Huntsville.
US 78	End of 4-lane W. of AL 5 Jasper.	I-59 Birmingham.
US 80	AL 14 W. Int. Selma	US 82 Montgomery.
US 82	Coker W. of I-59	Eoline W. of AL 5.
US 82	AL 206 Prattville	US 231 N. Int. Montgomery.
US 84	AL 92 E. of Daleville (via AL 210 Dothan Cir.).	End of 4-lane E. of Dothan.
US 98	I-10 Daphne	End of 4-lane near Fairhope.
US 231	FL State Line (via AL 210 Dothan Circle.).	End of 4-lane N. of Wetumpka.
US 231	Arab	TN State Line.
US 280	US 31 Mountain Brook.	AL 22 Alexander City.
US 280	I-85 Opelika	GA State Line Phenix City.
US 431	AL 210 Dothan	AL 173 Headland.
US 431	I-20 Anniston	AL 79 N. Int. Columbus City (via I-59—AL 77 Gadsden).
US 431	CR 8 New Hope	TN State Line.
AL 21	US 31 Atmore	I-65 N. of Atmore.
AL 21	US 431 Anniston	Jacksonville.
AL 67	I-65 Priceville	US 72 Alt. W. of Decatur.
AL 79	I-59 Birmingham	Pinson.
AL 152	US 231 N. Int. Montgomery.	I-65 N. Int. Montgomery.
AL 210	Dothan Circle (Beltway).	
AL 248	US 84 Enterprise	Ft. Rucker.
AL 249	Ft. Rucker	US 231.
Alaska		
AK 1	Potter Weigh Station Anchorage.	AK 3 Palmer.
AK 2	AK 3 Fairbanks	Milepost 1412 Delta Junction.
AK 3	AK 1 Palmer	AK 2 Fairbanks.

Note: Routes added to the Interstate System under 23 U.S.C. 139(c) are included only to the extent designated above.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
Arizona		
US 60	I-10 Brenda	I-17 Phoenix.
US 60	AZ 87 Mesa	AZ 70 Globe.
US 60	AZ 260 E. Int. Show Low.	NM State Line.
US 64	US 160 Teec Nos Pos.	NM State Line.
US 70	US 60 Globe	NM State Line.
US 80	AZ 92 Bisbee	NM State Line.
US 89	I-10 Tucson	US 60 Florence Junction.
US 89	AZ 69 Prescott	I-40 Ash Fork.
US 89	I-40 Flagstaff	UT State Line.
US 95	Mexican Border	I-8 Yuma.
US 160	US 89 Tuba City	NM State Line.
US 163	US 160 Kayenta	UT State Line.
US 666	I-10 Bowie	US 70 Safford.
US 666	US 60 Springerville	I-40 Sanders.
US 666	Mexican Border	US 80 Douglas.
AZ 69	US 89 Prescott	I-17 Cordes Junction.
AZ 77	US 60 Show Low	I-40 Holbrook.
AZ 84	I-10 Picacho	AZ 87 E. of Eloy.
AZ 85	I-8 Gila Bend (via I-8B).	I-10 Buckeye (via AZ 85 Spur).
AZ 87	AZ 84 E. of Eloy	AZ 387 W. of Coolidge.
AZ 87	AZ 587 Chandler	US 60 Mesa.
AZ 90	I-10 Benson	AZ 92 Sierra Vista.
AZ 169	AZ 69 Dewey	I-17 S. of Camp Verde.
AZ 189	Mexican Border	I-19 Nogales.
AZ 287	AZ 87 Coolidge	US 89 Florence.
AZ 360	I-10 Phoenix	AZ 87 Mesa.
AZ 387	I-10 Exit 185	AZ 87 W. of Coolidge.
AZ 587 (Old AZ 93).	I-10 Exit 175	AZ 87 Chandler.
Arkansas		

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

California		
I-80 Bus. Loop (US 50-CA 51).	I-80 W. Sacramento	I-80 near Watt Ave., Sacramento.
US 6	US 395 Bishop	NV State Line.
US 50	I-80 W. of Sacramento.	Sly Park Rd. Pollock Pines.
US 95	I-40 near Needles	NV State Line.
US 101	I-5 Los Angeles	I-80 San Francisco.
US 395	I-15 S. of Victorville	NV State Line.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
CA 2	I-5	I-210 Los Angeles.
CA 10 (San Bern. Fwy.).	US 101	I-5 Los Angeles.
CA 14	I-5 near San Fernando.	US 395 Ridgecrest.
CA 15	I-5	I-805 San Diego.
CA 22	I-405 Seal Beach	CA 55 Orange.
CA 24	I-580 Oakland	I-680 Walnut Creek.
CA 52	I-5	I-805 San Diego.
CA 55	I-405 Costa Mesa	CA 91 Anaheim.
CA 57	I-5 Santa Ana	I-210 Pomona.
CA 58	CA 99 Bakersfield	I-15 Barstow.
CA 60	I-10 Los Angeles	I-10 Beaumont.
CA 71	I-210	CA 60 Pomona.
CA 78	I-5 Carlsbad	I-15 Escondido.
CA 85	I-280 near San Jose	CA 101 Mountain View.
CA 91	I-110 Los Angeles	I-215/CA 60 Riverside.
CA 92	I-280 San Mateo	I-880 Hayward.
CA 94	I-5	CA 125 San Diego.
CA 99	I-5 Wheeler Ridge	I-80 Bus. Loop/US 50 Sacramento.
CA 110	I-10	US 101 Los Angeles.
CA 118	I-405 Los Angeles	I-210 San Fernando.
CA 125	CA 94	I-8 La Mesa.
CA 133	I-405	I-5 near El Toro.
CA 134	US 101 Los Angeles	I-210 Pasadena.
CA 163	I-8	I-15 San Diego.
CA 170	US 101	I-5 Los Angeles.
CA 198	I-5 Coalinga	CA 99 Visalia.
CA 215	I-15 N. of Temecula	CA 60 Riverside.
CA 905 (Old CA 117).	I-5	I-805 San Diego.

Note 1: I-580 Richmond-San Rafael Bridge (Toll)—The bridge is not available for through truck traffic by STAA-dimensioned vehicles because the I-580 connection to I-80 on the east is not completed and US 101 on the west is not on the National Network.

Note 2: I-580 Oakland—All vehicles over 4½ tons (except passenger buses and stages) are prohibited on MacArthur Freeway between Grand Ave. and the north city limits of San Leandro. (Excepted under 23 CFR 658.11(f).)

Colorado		

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Connecticut		
CT 2	Columbus Blvd. Hartford.	I-395 Norwich.
CT 8	I-95 Bridgeport	US 44 Winsted.
CT 9	I-95 Old Saybrook	I-91 Cromwell.
CT 20	CT 401 Bradley Intl. Airport, Windsor Locks.	I-91 Windsor.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
CT 401	CT 20 Windsor Locks	Bradley Intl. Airport Access Rd., Windsor Lks.
Delaware		
US 13	MD State Line	I-495 S. Int. Wilmington.
US 40	MD State Line	I-295/US 13 Wilmington.
US 113	MD State Line	US 13 Dover.
US 301	MD State Line	I-295/US 13 Wilmington.
District of Columbia		
Anacostia Fwy/Ken. Ave.	I-295	MD State Line Cheverly MD

Note: I-66—There is a 24 hour total truck ban on the Theodore Roosevelt Memorial Bridge and its approaches. (Excepted under 23 CFR 658.11(f).)

Florida		
US 27	FL Turnpike Ext.	FL 84 Andytown.
US 27	South Bay	I-75 Ocala.
US 301	SR 24 Waldo	I-10.
FL 24	SR 331 Gainesville	US 301 Waldo.
FL 85	FL 397 Valparaiso	I-10 near Crestview.
FL 202	I-95 Jacksonville	FL A-1-A.
FL 263	US 90 W. of Tallahassee.	I-10.
FL 331	I-75 S. of Gainesville	FL 24.
FL 397	Entrance Eglin AFB	FL 85 Valparaiso.
FL 528-FL 407.	I-4 Orlando	Cape Canaveral.
20th St. Expwy.	1-95 Jacksonville	Adams St. near Matthews Bridge.
FL Turnpike	S. End of Homestead Extension.	I-75 Wildwood.

Note: I-75—Alligator Alley/FL 84 (Toll) between Golden Gate and US 27 Andytown is a designated part of the Interstate System but is unsigned and not available until constructed to current Interstate standards.

Georgia		
US 19	US 82 Albany	Near Pelham.
US 23/GA 365.	I-985 near Gainesville.	US 441 near Cornelia.
US 25	I-16	N. of Statesboro.
US 27 Alt./ GA 85.	I-185 Columbus	Ellerslie.
US 29	US 78 W. Int.	US 129/441 E. Int. Athens.
US 41	I-75 W. of Morrow	Near Barnsville.
US 76	I-75 Dalton	US 411 Chatsworth.
US 78-US 29.	GA 138 Monroe	US 29 W. Int. Athens.
US 78/GA 410.	Valleybrook Rd. Scottsdale.	GA 10 Stone Mountain.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 82	Dawson	I-75 Tifton.
US 82	US 84 Waycross	I-95 Exit 6 Brunswick.
US 129	I-16	Gray.
US 129	GA 247C Warner Robins.	I-75 Macon.
US 280	AL State Line	Fort Benning.
US 411-US 41.	US 27 Rome	I-75 Near Emerson.
GA 2	US 27 Fort Oglethorpe.	I-75.
GA 14 Spur	US 29/Welcome All Road.	I-85/285 S. Int. Atlanta.
GA 21	1-95 Monteith	GA 204 Savannah.
GA 25 Spur	US 17 N. of Brunswick Brunswick.	I-95 Exit 8.
GA 53	Rome	I-75 Calhoun.
GA 85	Fayetteville	I-75.
GA 138	I-20 Conyers	US 78 Monroe.
GA 300	US 82 Albany	I-75 near Cordele.
GA 316 (5 Mi).	I-85	Near Lawrenceville.
GA 400	I-285 near Atlanta	GA 60.

Note: Atlanta area—Interstate highways within the I-285 beltway are not available to through trucks with more than 6 wheels because of construction.

Hawaii		
HI 61	HI 98 (Vineyard Boulevard).	Kawainui Bridge Kailua.
HI 63	HI 92 (Nimitz Hwy.)	HI 83 (Kahekili Hwy.).
HI 64	Sand Island Park	HI 92 (Nimitz Hwy.).
HI 72	61 Kailua/Waimanalo Junction.	Ainakoa.
HI 78	H-1 Middle St	HI 99 (Kamehameha Hwy.) Aiea.
HI 83	HI 99 Weed Junction	HI 61 (Kalanianaole Hwy).
HI 92	Pearl Harbor/Main Gate.	Kalakaua Avenue.
HI 93	Beginning of H-1	Makaha Bridge.
HI 95	H-1	Barbers Point Harbor.
HI 99	Pearl Harbor Int.	HI 83 Weed Junction.
Idaho		
I-15B	I-15/US 26 S. of Idaho Falls.	US 26 N. Int. Idaho Falls.
US 2	Dover	US 95 Sandpoint.
US 2	US 95 Bonners Ferry	MT State Line.
US 20/26	OR State Line	I-84 W. Caldwell Int. Caldwell
US 20	I-84 Mountain Home	MT State Line.
US 26	I-84 Bliss	I-15 Blackfoot.
US 30	US 95 Fruitland	ID 72 New Plymouth.
US 30	I-15 McCammon	WY State Line.
US 89	UT State Line	US 30 Montpelier.
US 91	UT State Line	I-15 Virginia.
US 93	NV State Line	Arco.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 95	OR State Line S. of Marsing.	OR State Line Weiser (via US 95 Spur).
US 95	Grangeville	Moscow.
US 95	I-90 Coour D'Alene	US 2 Bonners Ferry.
ID 16	ID 44 Star	Emmett.
ID 28	ID 33 Mud Lake	US 93 Salmon.
ID 33	ID 28 Mud Lake	US 20 Rexburg
ID 44	I-84 Caldwe1l	ID 55 Eagle.
ID 51	NV State Line	I-84 Mountain Home.
ID 53	WA State Line	US 95 Garwood.
ID 55	US 95 Marsing	I-84 Nampa.
ID 55	US 20/26 S. of Eagle.	ID 44 Eagle.
ID 75	US 93 Shoshone	Ketchum.
ID 87	US 20 N. of Macks Inn.	MT State Line.
Illinois		
US 20	US 20 BR W. of Rockford.	I-39 Rockford.
US 36	IL 100 NW. of Winchester.	I-55 Springfield.
US 50	US 50 BR E. of Lawrenceville.	IN State Line.
US 51	US 51 BR S. of Decatur.	I-72 Decatur.
US 67	IL 92 Rock Island	IA State Line.
IL 6	I-74/474 Peoria	IL 88 N. of Peoria.
IL 53	Army Trail Rd. Addison.	IL 68 Arlington Heights.
IL 92	I-280 Rock Island	US 67 Rock Island.
IL 336	IL 57 Fall Creek	US 24 NE. of Quincy.
IL 394	IL 1 Goodenow	I-80/94/294 S. Holland.
IL Toll Hwys	All Routes	
Indiana		
No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.		
Iowa		
US 6	NE State Line	I-80 Council Bluffs.
US 6	IA 48 Lewis	I-80 N. of Wilton.
US 6	IA 130 Davenport	I-74.
US 18	WCL Rock Valley	WI State Line.
US 20	I-29 Sioux City	IL State Line.
US 30	Missouri River Bridge (NE).	IL State Line Clinton.
US 34	Missouri River Bridge (NE).	IL State Line Burlington.
US 52	US 61 Dubuque	IA 386 N. Int. Sageville.
US 52	IA 3 Luxemburg	US 18 E. Int.
US 52	ECL Calmar	Burr Oak.
US 59	IA 2 Shenandoah	IA 184.
US 59	IA 92 Carson	US 6 N. Int.
US 59	IA 83 Avoca	US 30 Denison.
US 59	US 20 Holstein	IA 3.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 59	IA 10 E. Int. W. of Sutherland.	US 18 Sanborn.
US 61	Des Moines River Bridge (MO) Keokuk.	WI State Line.
US 63	MO State Line	IA 146 New Sharon.
US 63	I-80 Malcom	NCL Chester.
US 65	US 34 N. Int. Lucas	IA 117/330.
US 65	US 30 Colo	Sheffield.
US 65	SCL Mason City	IA 105 Northwood.
US 67	IL State Line Davenport.	4.64 Miles N. of Clinton.
US 69	SCL Lamoni	I-35.
US 69	US 6/65 Des Moines	IA 105 Lake Mills.
US 71	MO State Line	IA 196 Ulmer.
US 71	US 20 Early	MN State Line.
US 75	I-29 N. Int. Sioux City	IA 9 E. Int.
US 77	NE State Line	I-29 Sioux City.
US 136	Des Moines River Bridge (MO).	Mississippi River Bridge Keokuk.
US 151	I-80 E. of Williamsburg.	US 61 S. Int.
US 169	SCL Arispe	IA 92 Winterset.
US 169	SCL Desoto	I-80.
US 169	US 6 Adel	IA 141 Perry.
US 169	US 30 Beaver	IA 3.
US 169	US 18 Algona	IA 9 W. Int. Swea City.
US 218	US 136 Keokuk	IA 92 Ainsworth.
US 218	IA 22 Riverside	IA 227.
IA 1	IA 16 N. Int	IA 78 W. Int. Richland.
IA 1	IA 92 N. Int	IA 22 Kalona.
IA 1	US 6/218 N. Int. Iowa City.	I-80 Iowa City.
IA 1	SCL Martelle	US 151.
IA 2	NE State Line	IA 25 W. of Mt. Ayr.
IA 2	Decatur Co. Line	Mississippi River Bridge (IL) Ft. Madison.
IA 3	SD State Line	IA 12 N. Int. Akron.
IA 3	US 75 Le Mars	IA 7.
IA 3	IA 17 E. Int. Goldfield	IA 13 W. Int.
IA 4	IA 3 Pocahontas	US 18 E. Int.
IA 4	SCL Wallingford	IA 9 Estherville.
IA 5	IA 2 Centerville	I-35.
IA 7	IA 3	US 71 N. Int. Storm Lake.
IA 7	Barnum	US 20 Fort Dodge.
IA 8	US 63 Traer	US 218.
IA 9	IA 60	IA 26 Lansing.
IA 10	US 59 E. Int	ECL Sutherland.
IA 12	US 20	NCL Sioux City.
IA 13	US 30 Bertram	US 52.
IA 14	IA 92/5	NCL Newton.
IA 14	US 30 Marshalltown	US 20 S. Int.
IA 15	US 18 Whittemore	IA 9 W. Int.
IA 16	NCL Eldon	IA 1 N. Int.
IA 16	Denmark	US 61 Wever.
IA 17	IA 141 Granger	IA 3 E. Int.
IA 21	SCL What Cheer	IA 412 Waterloo.
IA 22	WCL Wellman	IA 70 W. Int.
IA 23	US 63 Ottumwa	IA 137 Eddyville.
IA 25	IA 2	IA 92 Greenfield.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
IA 25	IA 925 W. Int	IA 44 Guthrie Center.
IA 26	IA 9 Lansing	New Albin.
IA 28	IA 92	US 6 Des Moines.
IA 31	SCL Correctionville	US 59.
IA 37	WCL Earling	US 59.
IA 38	US 61 Muscatine	I-80.
IA 38	SCL Tipton	US 30 E. Int.
IA 39	US 59 Denison	Deloit.
IA 44	US 71 Hamlin	IA 141.
IA 46	IA 5	IA 163 Des Moines.
IA 48	US 59 Shenandoah	NCL Essex.
IA 48	US 34 Red Oak	US 6.
IA 49	SCL Lenox	US 34.
IA 51	US 18 Postville	IA 9.
IA 55	Seymour	IA 2.
IA 60	US 75 Lemars	MN State Line.
IA 62	US 61 Maquoketa	US 52 Bellevue.
IA 64	US 151 Anamosa	US 61.
IA 70	Columbus City	IA 22 W. Int.
IA 77	IA 92	Keota.
IA 78	IA 149	IA 249 Winfield.
IA 78	WCL Morning Sun	US 61.
IA 83	S. of Walnut	US 6 Atlantic.
IA 85	US 63 Montezuma	IA 21.
IA 86	US 71	IA 9 Montgomery.
IA 92	NE State Line	IA 48 Griswold.
IA 92	WCL Fontanelle	IA 1 N. Int.
IA 92	IA 1 S. Int	Cotter.
IA 93	WCL Sumner	IA 150 Fayette.
IA 94	I-380 Cedar Rapids	Palo.
IA 96	Gladbrook	US 63 Traer.
IA 99	Toolesboro	US 61 Wapello.
IA 100	IA 151 Cedar Rapids	I-380.
IA 103	US 218	US 61 Fort Madison.
IA 105	US 69 Lake Mills	US 218 St. Ansgar.
IA 107	SCL Thornton	US 18 Clear Lake.
IA 110	US 20	IA 7 Storm Lake.
IA 111	US 18 Britt	Woden.
IA 117	IA 163 Prairie City	US 65.
IA 127	IA 183 S. Int	US 30 Logan.
IA 130	US 61/67 Davenport	I-80.
IA 133	US 30	Nevada.
IA 136	ECL Delmar	WCL Lost Nation.
IA 136	SCL Worthington	US 52/IA 3 Luxemburg.
IA 137	IA 5 Albia	IA 23.
IA 141	I-29	US 30/59 Denison.
IA 141	WCL Manning	US 169.
IA 141	IA 210 Woodward	I-35 Urbandale.
IA 144	IA 141 Perry	US 30 Grand Junction.
IA 145	I-29	ECL Thurman.
IA 146	US 63 New Sharon	Dunbar.
IA 148	IA 2 Bedford	US 34.
IA 148	IA 951 Carbon	I-80.
IA 149	US 63	IA 78 Martinsburg.
IA 149	SCL Williamsburg	I-80.
IA 150	US 218 Vinton	IA 283.
IA 150	US 20	US 18 West Union.
IA 150 (Old)	I-380 Center Point	IA 150.
IA 157	US 63	Lime Springs.
IA 160	US 69/IA 415	I-35 Ankeny.
IA 163	US 65 Des Moines	IA 92 Oskaloosa.
IA 173	IA 83 Atlantic	I-80.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
IA 175	NE State Line	ECL Onawa.
IA 175	US 71 S. Int	ECL Lake City.
IA 175	Gowrie	ECL Dayton.
IA 175	WCL Stratford	ECL Radcliffe.
IA 175	US 65 N. Int	US 63 Voorhies.
IA 181	Melcher-Dallas	IA 5/92.
IA 183	IA 127 N. Int	NCL Pisgah.
IA 184	WCL Randolph	US 59.
IA 192	I-29/80	I-29 Council Bluffs.
IA 196	US 71	US 20 Sac City.
IA 210	IA 141	NCL Woodward.
IA 210	IA 17 N. Int	ECL Slater.
IA 215	Union	IA 175 Eldora.
IA 221	I-35	Roland.
IA 227	US 218	Stacyville.
IA 244	I-80	IA 191 Neola.
IA 249	IA 78	Winfield.
IA 272	Elma	US 63.
IA 273	WCL Drakesville	US 63.
IA 276	US 71	IA 327 Orleans.
IA 279	US 30	Atkins.
IA 281	WCL Fairbank	IA 150.
IA 283	Brandon	IA 150.
IA 287	US 30	Newhall.
IA 300	Modale	I-29.
IA 316	IA 5 Pleasantville	NCL Runnells.
IA 330	US 65	US 30 Marshalltown.
IA 363	IA 101	Urbana.
IA 401	US 6	Johnston.
IA 405	Lone Tree	IA 22.
IA 406	US 34	US 61 Burlington.
IA 415	US 6 Des Moines	IA 160.
IA 927	IA 38 Wilton	I-280 Davenport.
IA 928	US 20/IA 17	US 20 Williams.
IA 930	US 30	Ames.
IA 939	IA 150 Independence	IA 187.
IA 964	IA 5/92	IA 975/14 Knoxville.
IA 967	US 20	Farley.
IA 975	IA 5/92	IA 964/14 Knoxville.
University Ave.	US 20 SW. of Cedar Falls.	US 218 Cedar Falls.

Kansas

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Kentucky

I-471 Conn	US 27 Highland Heights.	I-275/471.
US 23	OH State Line Portsmouth OH.	US 119 N. of Pikeville.
US 23 Spur	US 119 Jenkins	VA State Line.
US 23	US 60/23 Ashland	OH State Line Coal Grove OH.
US 25	US 421 S. of Richmond.	KY 876 Richmond.
US 25	KY 418 S. of Lexington.	KY 4 Lexington.
US 25E	VA State Line Middlesboro.	I-75 N. of Corbin.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 27	TN State Line S. of Whitley City.	OH State Line Newport (via KY 4 Lexington).
US 31W	I-65 near TN State Line.	KY 100 Franklin.
US 31W/68	W. Int. E. of Bowling Green.	KY 446.
US 31W	Western Ky. Pkwy. Elizabethtown (via US 31W Byp. Elizabethtown).	I-264 Louisville.
US 41	Pennyrile Pkwy. Nortonville.	Pennyrile Pkwy. Madisonville.
US 41	Pennyrile Pkwy. Henderson.	IN State Line Evansville IN.
US 41 Alt	TN State Line Fort Campbell.	Pennyrile Pkwy. Hopkinsville.
US 45	Jackson Purchase Pkwy. N. of Mayfield.	US 62 Paducah.
US 60	US 60 Byp. W. of Owensboro.	KY 69 Hawesville.
US 60	KY 144 Garrett	US 31W Ft. Knox.
US 60	US 421/KY 676 Frankfort.	KY 4 Lexington.
US 60	KY 180 Cannonsburg	US 23 Ashland.
US 60 Byp	US 60 W. of Owensboro.	US 60 E. of Owensboro.
US 62	US 45 Paducah	I-24 Reidland (via US 68).
US 62	I-24 Calvert City	Western KY Pkwy. Eddyville.
US 68	I-24 E. of Cadiz	Green River Pkwy. Bowling Green.
US 68	US 27 Paris (via Paris Byp.).	OH State Line Maysville.
US 119	KY 15 Whitesburg	US 23 Jenkins.
US 119	US 25E S. of Pineville.	US 421 Harlan.
US 119	US 23 N. of Pikeville	KY 1441 E. of Zebulon.
US 127	US 150 Danville (via Danville Byp.).	US 60 Frankfort (via Lawrenceburg Byp.).
US 150	US 31E Bardstown (via KY 245-US 62 Bardstown).	US 27 NCL Stanford (via Danville Byp.).
US 231	US 60 Byp. Owensboro	IN State Line.
US 421	US 119 N. of Harlan	0.1 Mile S. of Harlan Appalachian Reg. Hosp.
US 421	US 60/KY 676 Frankfort.	Broadway RR. Bridge Frankfort.
US 421-KY 80.	Daniel Boone Pkwy	2nd St. Manchester.
US 431	US 60 Byp. Owensboro.	US 60 (4th St.) Owensboro.
US 460	I-64 N. of Mt. Sterling.	KY 686 N. of Mt. Sterling.
US 460	Mountain Pkwy	US 23 Paintsville.
US 641	TN State Line Hazel	
KY 4	Entire Circle of Lexington.	KY 348 Benton.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
KY 11	KY 3170 Lewisburg	US 62/68 Maysville.
KY 15	Mountain Pkwy. Campton.	US 119 Whitesburg.
KY 21	I-75 W. of Berea	US 25 Berea.
KY 55	Cumberland Pkwy. Columbia.	US 150 Springfield.
KY 61	PeytonsburgKY 90 Burkesville..	
KY 69	US 60 Hawesville	IN State Line.
KY 79	KY 1051 Brandenburg.	IN State Line.
KY 80	US 27/Cumberland Pkwy. Somerset (via Somerset Byp.).	US 25 N. of London.
KY 80	KY 15/Daniel Boone Pkwy. Hazard.	US 23 Watergap.
KY 90	I-65 Cave City	Cumberland Pkwy. Glasgow (via US 31E Byp. Glasgow).
KY 90	KY 61 Burkesville	US 27 Burnside.
KY 114	US 460 E. of Salyersville.	US 23/460 Prestonsburg.
KY 118	Daniel Boone Pkwy	US 421/KY 80 NW. of Hyden.
KY 144	KY 448 S. of Brandenburg.	US 60.
KY 151	US 127 N. of Lawrenceburg.	I-64 Graefenburg.
KY 180	I-64 S. of Cannonsburg.	US 60 W. of Cannonsburg.
KY 192	I-75 S. of London	Daniel Boone Pkwy. E. of London.
KY 259	Western KY Pkwy	US 62 Leitchfield.
KY 281	US 41 Alt. Madisonville.	US 41.
KY 418	US 25 SE. of Lexington.	I-75 SE. of Lexington
KY 446	US 31W NW. of Bowling Green.	I-65.
KY 448	KY 1051 Brandenburg.	KY 144 S. of Brandenburg.
KY 555	US 150 Springfield	Blue Grass Pkwy.
KY 676	US 127 Frankfort	US 60/421 Frankfort.
KY 686	KY 11 S. of Mt. Sterling.	US 460 N. of Mt. Sterling.
KY 876	I-75 Richmond	US 25 Richmond.
KY 922	KY 4 Lexington	I-64/75 N. of Lexington.
KY 1051	KY 448 S. of Brandenburg.	KY 79.
KY 1682	US 68 W. of Hopkinsville.	Pennyrile Pkwy.
KY 1958	KY 627 S. of Winchester.	I-64 Winchester.
Audubon Pkwy.	Pennyrile Pkwy. Henderson.	US 60 Byp. Owensboro
Blue Grass Pkwy.	I-65 Elizabethtown	US 60 E. of Versailles.
Cumberland Pkwy.	I-65 S. of Park City	US 27/KY 80 Byp. Somerset.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
Daniel Boone Pkwy.	US 25 N. of London	KY 15 N. of Hazard.
Green River Pkwy.	I-65 SE. of Bowling Green.	US 60 Byp. Owensboro.
Jackson Purchase Pkwy.	TN State Line US 51 Fulton.	I-24 Calvert City (via US 45 Byp. Mayfield).
Mountain Pkwy.	I-64 E. of Winchester.	US 460 Salyersville.
Pennyrile Pkwy.	US 41A Hopkinsville	US 41 Nortonville.
Pennyrile Pkwy.	US 41 Madisonville	US 41 Henderson.
Western Kentucky Pkwy.	I-24 S. of Eddyville	US 31W Elizabethtown.

Note: I-75/71 Cincinnati area—Restrictions may be applied to through traffic with semitrailers and/or trailers on northbound I-75/71 from I-275 to the Ohio State Line because of construction.Through traffic is defined as trucks which do not have destinations within I-275 (Circle Freeway) nor within a two (2) mile arc paralleling I-275 on the northern side of I-275 in Ohio between U.S. 22 and U.S. 27.This note is valid through the year 1992.

Louisiana

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Maine

US 1	I-95 Brunswick	Old US 1 (Vicinity of Congress St.) Bath.
Scarboro Connector.	I-295 South Portland	US 1 Scarborough.
South Portland Spur.	I-95 South Portland	US 1 South Portland.

Maryland

US 13	VA State Line	DE State Line.
US 15	US 40/340 Frederick	MD 26 Frederick.
US 40	US 15/340 Frederick	I-70/270 Frederick.
US 48	WV State Line	I-70 Hancock.
US 50	MD 201/Kenilworth Ave. Cheverly.	US 13 Salisbury.
US 301	VA State Line	DE State Line.
US 340	MD 67 Weverton	US 15/40 Frederick.
MD 3	US 50/301 Bowie	I-695/MD 695 Glen Burnie.
MD 4	I-95 Forestville	US 301 Upper Marlboro.
MD 10	MD 648 Glen Burnie	MD 695 Glen Burnie.
MD 100	MD 3	MD 607 Jacobsville.
MD 201 (Kenilw. Ave.).	D.C. Line	US 50 Cheverly.
MD 295	I-695 Linthicum	I-95 Baltimore.
MD 695	I-695/MD 3 Glen Burnie.	I-95/695 Kenwood.
MD 702	Old Eastern Avenue	MD 695 Essex.

Note: I-895 Baltimore—Widths over 96 inches and tandem trailers may be prohibited on the Harbor Tunnel Thruway because of construction.

Massachusetts

US 3	I-95 Burlington	NH State Line.
MA 2	I-190 Leominister	I-495 Littleton.
MA 24	I-195 Fall River	I-93 Randolph.
MA 140	I-195 New Bedford	MA 24 Taunton.

Note: I-93 Boston—Restrictions may be applied, when necessary, to portions of I-93 affected by reconstruction of the Central Artery (I-93) and construction of the Third Harbor Tunnel (I-90).

Michigan

I-75 Conn	US 24BR Pontiac	I-75.
US 2	WI State Line Ironwood.	WI State Line S. of Crystal Falls.
US 2	WI State Line Iron Mountain.	I-75 St. Ignace.
US 8	US 2 Norway	WI State Line.
US 10	Ludington	I-75 Bay City.
US 12	IN State Line	I-94 W. Jct. Ypsilanti.
US 23	OH State Line	I-75 Mackinaw City.
US 24	OH State Line	MI 15 Waterford.
US 24BR	US 24 S. of Pontiac	MI 1 Pontiac.
US 27	IN State Line	I-75 S. of Grayling.
US 31	IN State Line	I-75 Mackinaw City.
US 33	IN State Line	US 12 Niles.
US 41	WI State Line	Houghton.
US 45	WI State Line	MI 26 Rockland.
US 127	OH State Line	I-69/US 27 N. of Lansing.
US 131	IN State Line	US 31 Petoskey.
US 141	WI State Line S. of Crystal Falls.	US 41/MI 28.
US 223	US 23	US 12/127 Somerset.
MI 10	I-375 Detroit	Orchard Lake Road.
MI 13	I-69 Lennon	I-75 Saginaw (via MI 81).
MI 13	I-75 Kawkawlin (via I-75 Conn.).	US 23 Standish.
MI 14	I-94 Ann Arbor	I-96/275 Plymouth.
MI 15	US 24 Clarkston	MI 25 Bay City.
MI 18	US 10	MI 61 Gladwin.
MI 20	US 31 New Era	MI 37 White Cloud.
MI 20	US 27 Mt. Pleasant	US 10 Midland.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
MI 21	I-96 near Grand Rapids.	I-69 Flint.
MI 24	I-75 Auburn Hills (via I-75 Conn.).	I-69 Lapeer.
MI 24	MI 46	MI 81 Caro.
MI 26	US 45 Rockland	MI 38.
MI 27	I-75	US 23 Cheboygan.
MI 28	US 2 Wakefield	I-75.
MI 32	Hillman	Alpena.
MI 33	Mio	Fairview.
MI 35	US 2/41 Escanaba	US 2/41 Gladstone.
MI 36	US 127 Mason	Dansville.
MI 37	MI 55	US 31/MI 72 Traverse City.
MI 37	I-96 Grand Rapids	MI 46 Kent City.
MI 38	US 45 Ontonagon	US 41 Baraga.
MI 39	I-75 Lincoln Park	MI 10 Southfield.
MI 40	MI 89 Allegan	US 31BR/I-196BL Holland.
MI 43	MI 37 Hastings	US 127 Lansing.
MI 46	US 131 Howard City	MI 25 Port Sanilac.
MI 47	I-675 Saginaw (via MI 58).	US 10.
MI 50	MI 43/66 Woodbury	MI 99 Eaton Rapids.
MI 50	US 127 S. Jct	I-75 Monroe.
MI 51	US 12 Niles	I-94.
MI 52	OH State Line	US 12 Clinton.
MI 52	I-96 Webberville	MI 46 W. of Saginaw.
MI 53	MI 3 Detroit	MI 25 Port Austin.
MI 55	US 31 Manistee	I-75.
MI 55	MI 65	US 23 Tawas City.
MI 57	US 131 N. of Rockford.	US 27.
MI 57	MI 52 Chesaning	I-75 Clio.
MI 59	US 24 BR Pontiac	I-94.
MI 60	MI 62 Cassopolis	I-69/US 27.
MI 61	MI 115	US 27 Harrison.
MI 61	MI 18 Gladwin	US 23 Standish.
MI 63	US 31 Scottdale	I-196.
MI 65	US 23 Omer	MI 55.
MI 65	MI 72 Curran	MI 32.
MI 65	Posen	US 23 N. of Posen.
MI 66	IN State Line	US 12 Sturgis.
MI 66	Battle Creek	MI 78.
MI 66	MI 43/50 Woodbury	MI 46 Edmore.
MI 67	US 41 Trenary	MI 94 Chatham.
MI 68	US 31/131 Petoskey	US 23 Rogers City.
MI 69	US 2/141 Crystal Falls.	MI 95 Sagola.
MI 72	US 31/MI 37 Traverse City.	US 23 Harrisville.
MI 77	US 2	MI 28 Seney.
MI 78	MI 66	I-69 Olivet.
MI 81	MI 24 Caro	MI 53.
MI 82	MI 37 S. Jct. Newago	US 131.
MI 83	Frankenmuth	I-75.
MI 84	I-75	MI 25 Bay City.
MI 89	MI 40 Allegan	US 131.
MI 94	US 41	MI 28 Munising.
MI 95	US 2 Iron Mountain	US 41/MI 28.
MI 104	US 31 Grand Haven	I-96.
MI 115	US 27	MI 22 Frankfort.
MI 117	US 2 Engadine	MI 28.
MI 123	I-75 N. of St. Ignace	MI 28.
MI 142	MI 25 Bay Port	MI 53.
MI 205	IN State Line	US 12 W. of Union.
	Minnesota	
US 2	ND State Line E. Grand Forks.	I-35 Duluth.
US 10	CH 11 E. of Moorhead.	I-694 Arden Hills.
US 12	US 59 Holloway	I-94 Minneapolis.
US 14	US 75 Lake Benton	US 52 Rochester.
US 52	I-90 S. of Rochester	MN 110 Inver Grove Hts.
US 53	I-35/535 Duluth	US 169 S. Int. Virginia.
US 59	I-90 Worthington	MN 30 S. Int. Slayton.
US 59	MN 7 Appleton	US 12 Holloway.
US 59	I-94 N. Int. Fergus Falls.	MN 175 Lake Bronson.
US 61	WI State Line	MN 60 Wabasha.
US 61	MN 55 Hastings	I-94 St. Paul.
US 61	I-35 Duluth	CH 2 Two Harbors.
US 63	I-90 Rochester	US 52 Rochester.
US 63	MN 58 Red Wing	WI State Line.
US 71	IA State Line	MN 34 Park Rapids.
US 75	I-90	US 2 Crookston.
US 75	MN 175 Hallock	Canadian Border.
US 169	I-90 Blue Earth	US 212 Chanhassen.
US 169	I-94 Brooklyn Park	MN 23 Milaca.
US 169	US 2 Grand Rapids	US 53 S. Int. Virginia.
US 212	SD State Line	MN 62 Edina.
US 218	I-90 Austin	US 14 Owatonna.
MN 1	ND State Line	US 59/MN 32 Thief River Falls.
MN 3	MN 110 Inver Grove Hts.	I-94 St. Paul.
MN 5	MN 22 Gaylord	US 212.
MN 7	US 75 near Odessa	MN 100 St. Louis Park.
MN 9	US 12 Benson	US 59 Morris.
MN 11	MN 32 Greenbush	MN 72 Baudette.
MN 13	I-90	MN 14 Waseca.
MN 15	I-90 Fairmont	MN 60.
MN 15	US 14 New Ulm	MN 19 Winthrop.
MN 19	US 59 Marshall	MN 22 Gaylord.
MN 22	MN 109 Wells	US 14/MN 60 Mankato.
MN 22	US 212 Glencoe	US 12 Litchfield.
MN 23	US 75 Pipestone	I-35 near Hinckley.
MN 24	I-94 Clearwater	US 10 Clear Lake.
MN 25	I-94 Monticello	US 10 Big Lake.
MN 27	MN 29 Alexandria	MN 127 Osakis.
MN 27	US 71 N. Int. Long Prairie.	US 10 Little Falls.
MN 28	SD State Line Browns Valley.	I-94/US 71 Sauk Centre.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
MN 29	I-94 Alexandria	MN 27 Alexandria.
MN 30	US 75 Pipestone	US 59 S. Int. Slayton.
MN 32	US 59/MN 1 Thief River Falls.	MN 11 Greenbush.
MN 33	I-35 Cloguet	US 53 Independence.
MN 34	US 71 Park Rapids	MN 371 Walker.
MN 36	I-35W Roseville	MN 95 Oak Park Hts.
MN 43	I-90 Wilson	US 61 Winona.
MN 55	MN 28 Glenwood	7th St. N., W. Int. Minneapolis.
MN 55	I-94 E. Int. Minneapolis.	MN 3 Inver Grove Hts.
MN 60	IA State Line Bigelow	US 14/169 Mankato.
MN 62	US 212 Edina	MN 100 Edina.
MN 65	I-694 Fridley	MN 23 Mora.
MN 68	US 75 Canby	MN 19 Marshall.
MN 101	I-94 Rogers	US 10 Elk River.
MN 109	I-90 Alden	MN 22 Wells.
MN 175	US 75 Hallock	US 59.
MN 210	ND State Line Breckenridge.	US 59 W. Int. Fergus Falls.
MN 210	US 10 Motley	I-35 Carlton.
MN 371	US 10 Little Falls	US 2 Cass Lake.

NOTE: I-35E St. Paul—The parkway segment of I-35E from 7th Street to I-94 is not available to trucks because of reduced design standards.

Mississippi

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Missouri

US 24	I-435 Kansas City	US 65 Waverly.
US 24	US 36 E. Jct. W. of Hannibal.	IL State Line.
US 36	KS State Line St. Joseph.	IL State Line Hannibal.
US 40	I-70 Wentzville	I-270 W. of St. Louis.
US 50	I-470 Exit 7 Kansas City.	I-44 Exit 247 Union.
US 54	US 54BR Lake Ozark	IL State Line.
US 59	KS State Line	I-229 St. Joseph.
US 60	OK State Line	US 71 Neosho.
US 60	MO 37 Monett	US 63 Cabool.
US 60	2 Mi. E. of E. Jct. MO 21 Ellsinore.	I-55/57 Sikeston.
US 61	I-70 Wentzville	IA State Line.
US 63	AR State Line Thayer	IA State Line.
US 65	AR State Line Ridgedale.	IA State Line.
US 67	AR State Line	I-55 Exit 174 Crystal City.
US 67	MO 367 N. of St. Louis.	IL State Line.
US 71	AR State Line	I-435/470 Kansas City.
US 71	I-29 Exit 53 N. of St. Joseph.	US 136 Maryville.
US 71 Alt	I-44 E. of Joplin	US 71 Carthage.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[Tho federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 136	NE State Line	I-29 Exit 110 Rock Port.
US 166	KS State Line	I-44 SW. of Joplin.
US 169	I-29 Kansas City	MO 152 Kansas City.
US 412	AR State Line	I-55 Exit 19 Hayti.
MO 5	AR State Line	US 60 Mansfield.
MO 7	US 71 Harrisonville	MO 13 Clinton.
MO 13	I-44 Springfield	US 24 Lexington.
MO 25	US 412 near Kennett	US 60 Dexter.
MO 37	MO 76 Cassville	US 60 Monett.
MO 47	US 50 Union	MO 100 Washington.
MO 84	AR State Line	US 412 near Kennett.
MO 100	MO 47 Washington	I-44 SE. of Washington.
MO 171	KS State Line/KS 57	US 71 Webb City.
MO 367	I-270 N. of St. Louis	US 67 N. of St. Louis.

Montana

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Nebraska

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Nevada

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

New Hampshire

US 3	MA State Line	NH 101A Nashua.
US 4/ Spaulding Tpk.	I-95 Portsmouth	Exit 6 E. of Durham.

New Jersey

US 130	US 322 Bridgeport	I-295 Logan Township.
US 130	I-295/NJ 44 West Deptford.	I-295 West Deptford.
US 322	PA State Line	US 130 Bridgeport.
NJ 42	Atlantic City Expwy. Turnersville.	I-295 Bellmawr.
NJ 81	I-95 Elizabeth	US 1/9 Newark Intl. Airport.
NJ 440	I-287/I-95 Edison	NY State Line Outerbridge Crossing.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
Note: I-95—The following two sections of the New Jersey Turnpike are available to STAA-dimensioned vehicles. They were added to the Interstate System on March 3, 1983, but are not signed as Interstate.		
PA Tpk. Connector.	PA State Line	Exit 6 Mansfield.
NJ Tpk.	Exit 6 Mansfield	Exit 10 Edison.
New Mexico		
US 56	I-25 Springer	OK State Line.
US 60	AZ State Line	I-25 Socorro.
US 62	US 285 Carlsbad	TX State Line.
US 64	AZ State Line	US 550 Farmington.
US 70	AZ State Line	I-10 Lordsburg.
US 70	I-10 Las Cruces	US 54 Tularosa.
US 70	US 285 Roswell	US 84 Clovis.
US 80	AZ State Line	I-10 Road Forks.
US 84	TX State Line Clovis	CO State Line.
US 87	US 56 Clayton	TX State Line.
US 160	AZ State Line (Four Corners).	CO State Line.
US 285	TX State Line S. of Carlsbad.	CO State Line.
US 550	US 64 Farmington	CO State Line.
US 666	I-40 Gallup	CO State Line.
New York		
US 15	Presho Int	NY 17 Corning.
US 20	NY 75 Mt. Vernon	Howard Rd. Mt. Vernon.
US 219	NY 39 Springville	I-90 S. of Exit 55.
NY 5	NY 174 Camillus	NY 695 Fairmont.
NY 5	ECL Schenectady	I-87 Colonie.
NY 5	NY 179 Woodlawn Beach.	NY 75 Mt. Vernon.
NY 7	Schenectady/Albany Co. Line.	I-87 Colonie.
NY 8	CR 9/Main St. Sauquoit.	I-790 Utica.
NY 12	I-790 Utica	Putnam Road Trenton.
NY 17	Exit 24 Allegany	I-87 Exit 16 Harriman.
NY 17	NJ State Line	I-87 Exit 15 Suffern.
NY 33	Michigan Ave. Buffalo.	Greater Buffalo Intl. Airport.
NY 49	NY 365 Rome	NY 291 near Oriskany.
NY 104	Maplewood Dr. Rochester.	Monroe/Wayne Co. Line.
NY 179	NY 5 Woodlawn Beach.	I-90 Exit 56 Windom.
NY 198	I-190 Exit N11	NY 33 Buffalo.
NY 254	I-87 Glens Falls	0.3 Miles E. of US 9.
NY 365	I-90 Exit 33	NY 49 Rome.
NY 390	I-390/490 Rochester	NY 18 North Greece.
NY 400	I-90 Exit 54	NY 16 South Wales.
NY 481	I-81 North Syracuse	NY 3 Fulton.
NY 590	I-490/590 Rochester	NY 104 Irondequoit.
NY 690	I-90/690 Lakeland	NY 370 Baldwinsville.
NY 695	NY 5 Fairmont	I-690 Solvay.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
Berkshire Conn. (NY 912M).	I-87 Exit 21A S. of Albany.	I-90 Exit B1.
Inner Loop (NY 940T).	I-490 W. Int. Rochester.	I-490 E. Int. Rochester.
Walden Avenue (NY 952Q).	I-90 Exit 52	NY 277 Cheektowaga.
North Carolina		
I-40 Conn	US 19/23/74 Clyde	I-40 W. of Clyde.
I-95 BR	I-95 S. of Fayetteville	I-95 N. of Fayetteville.
US 1	US 74 Rockingham	I-85 near Henderson.
US 15	US 401 Laurinburg	US 1 Aberdeen.
US 15	US 1 Northview	US 64 Pittsboro.
US 17	SC State Line	US 74/76 W. of Wilmington.
US 17	SR 1409 E. of Wilmington.	VA State Line.
US 19/US 23.	I-240 Asheville	N. Int. Mars Hill.
US 23	US 441 Franklin	US 74 Dillsboro.
US 25	SC State Line	I-26 East Flat Rock.
US 25/US 70.	US 19/23 Weaverville.	US 25/70 Bypass Marshall.
US 29	US 52 Lexington	VA State Line.
US 52	NC 24/27 Albemarle	VA State Line.
US 64	I-40 Morganton	US 321 Lenoir.
US 64	US 29 Lexington	US 15 Pittsboro.
US 64	US 1/70/401 Raleigh	US 17 Williamston.
US 70	I-77 Statesville	I-85 Salisbury (via US 601).
US 70	I-85 Durham	US 70A W. of Smithfield.
US 70A	US 70 W. of Smithfield.	US 70 Princeton.
US 70	US 70A Princeton	Beaufort.
US 74	TN State Line	I-40 Conn. Clyde.
US 74	US 221 Rutherfordton.	I-85 Kings Mountain.
US 74 (See Note Below).	I-277 Charlotte	US 17 W. Int. Wilmington.
US 76	US 17/74 W. Int. Wilmington.	SR 1409 E. of Wilmington.
US 158	I-40 Winston-Salem	US 29 Reidsville.
US 158	I-85 Henderson	US 258 Murfreesboro.
US 220	US 74 Rockingham	VA State Line.
US 221	US 74 Rutherfordton	I-40 Glenwood.
US 258	NC 24 N. Int. Richlands.	US 64 Tarboro.
US 258	US 158 Murfreesboro	VA State Line.
US 264	US 64 Zebulon	US 17 Washington.
US 301	I-95 Kenly	NC 4 Battleboro.
US 321	SC State Line	I-85 Gastonia.
US 321	I-40 Hickory	NC 18/90 Lenoir.
US 401	SC State Line	I-40 Raleigh.
US 421	Carolina Beach	I-95 Dunn.
US 421	US 1 Sanford	US 64 Siler City.
US 421	I-40 Winston-Salem	Wilkesboro.
US 521	SC State Line	I-77 Charlotte.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 601	SC State Line	US 74 Monroe.
NC 4	I-95 Gold Rock	US 301 Battleboro.
NC 11	US 70 Kinston	US 264 Greenville.
NC 24	US 74 Charlotte	US 52 Albemarle.
NC 24	NC 87 Spout Springs	I-95 Fayetteville.
NC 24	US 421 Clinton	US 70 Mansfield.
NC 49	I-85 Charlotte	US 64 Asheboro.
NC 87	NC 24/27 Spout Springs.	US 1 Sanford.
SR 1409	US 76 E. of Wilmington.	US 17.
SR 1728	I-40 W. of Raleigh	US 1/Wade Ave. Raleigh.
SR 1959-SR 2028.	US 70 Bethesda	I-40 S. of Durham.

Note: US 74 Charlotte—STAA-dimensioned vehicles are subject to State restrictions on US 74 in Charlotte because of narrow lane widths.

North Dakota

US 2	MT State Line	MN State Line Grand Forks.
US 10	I-94 W. Fargo	MN State Line.
US 12	MT State Line Marmarth.	SD State Line.
US 52	I-94 Jamestown	Canadian Border.
US 81	I-29 Manvel	I-29 Joliette.
US 83	SD State Line	Canadian Border Westhope.
US 85	SD State Line	Canadian Border Fortuna.
US 281	SD State Line Ellendale.	Canadian Border.
ND 1	ND 11 Ludden	ND 13 S. Jct.
ND 5	MT State Line	US 85 Fortuna.
ND 11	US 281 Ellendale	ND 1 Ludden.
ND 13	ND 1 S. Jct	MN State Line.
ND 68	MT State Line	US 85 Alexander.
ND 200	MT State Line	US 85 Alexander.

Ohio

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Oklahoma

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Oregon

US 20	OR 34 W. Int. Philomath.	ECL Sweet Home.
US 20	OR 126 Sisters	ID State Line Nyssa.
US 26	US 101 Cannon Beach Junction.	OR 126 Prineville.
US 30	US 101 Astoria	I-405 Portland.
US 30 BR	OR 201 Ontario	ID State Line.
US 95	NV State Line	ID State Line.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 95 Spur	OR 201	ID State Line Weiser, ID.
US 97	CA State Line	WA State Line.
US 101	SCL Port Orford	OR 126 Florence.
US 101	US 20 Newport	OR 18 Otis.
US 101	OR 6 Tillamook	WA State Line.
US 197	I-84 The Dalles	WA State Line.
US 199	CA State Line	OR 99 Grants Pass.
US 395	CA State Line	US 26 John Day.
US 395	I-84 Stanfield	US 730 near Umatilla.
US 730	I-84 Boardman	WA State Line.
OR 6	US 101 Tillamook	US 26 Near Banks.
OR 8	OR 47 Forest Grove	OR 217 Beaverton.
OR 11	I-84 Pendelton	WA State Line.
OR 18	US 101 Otis	OR 99W Dayton.
OR 19	OR 206 Condon	I-84 Arlington.
OR 22	OR 18 near Willamina.	US 20 Santiam Junction.
OR 31	US 97 La Pine	US 395 Valley Falls.
OR 34	OR 99W Corvallis	US 20 Lebanon.
OR 35	US 26 Government Camp.	I-84 Hood River.
OR 38	US 101 Reedsport	I-5 Anlauf.
OR 39	CA State Line	OR 140 E. of Klamath Falls.
OR 42	US 101 Coos Bay	OR 42S Coquille.
OR 47	OR 8 Forest Grove	US 26 N. of Banks.
OR 58	I-5 Eugene	US 97 near Chemult.
OR 62	Medford	OR 140 White City.
OR 78	Burns	US 95 Burns Junction.
OR 99	I-5 E. of Rogue River	I-5 Grants Pass.
OR 99	I-5 Eugene	OR 99W/E Junction City.
OR 99E	OR 99/99W Junction City.	I-5 Albany.
OR 99E	I-5 Salem	I-5 Portland.
OR 99W	OR 99/99E Junction City.	I-5 Portland.
OR 126	US 101 Florence	US 26 Prineville.
OR 138	OR 38 Elkton	I-5 near Sutherlin.
OR 140	OR 62 White City	OR 39 E. of Klamath Falls.
OR 201	US 26 Cairo	US 95 Spur near Weiser, ID.
OR 207	US 730 Cold Springs Jct.	OR 74 S. Int. Heppner.
OR 212	OR 224 E. Int. near Rock Ck. Corner.	US 26 near Boring.
OR 214	I-5 Woodburn	OR 213 Silverton.
OR 217	US 26 Beaverton	I-5 Tigard.
OR 223	Kings Valley Hwy. in Dallas.	OR 99W Rickreall.
OR 224	OR 99E Milwaukie	OR 212 E. Int. near Rock Ck. Corner

Pennsylvania

US 1	US 13 Morrisville	NJ State Line.
US 6	Conneaut Lake Borough.	End of 4-lane Bypass NE. of Meadville.
US 11	Turnpike Int. 16	US 15 Harrisburg.
US 13	US 1 Morrisville	Turnpike Int. 29.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 15	Turnpike Int. 17	US 11 Harrisburg Expwy.
US 15	PA 642 West Milton	White Deer Int.
US 15	I-180/US 220 Williamsport.	End of lim. acc. Williamsport.
US 20	PA 89 North East	I-90 Int. 12.
US 22	WV State Line	I-79 Int. 15 Carnegie.
US 22	I-78 Fogelsville	NJ State Line.
US 30	End of lim. acc. W. of Greensburg.	End of lim. acc. E. of Greensburg.
US 30	PA 462 W. of York	PA 462 E. of Lancaster.
US 119	End of lim. acc. S. of Uniontown.	US 30 Greensburg.
US 202	DE State Line	I-76 Int. 26 King of Prussia.
US 209	PA 33 Snydersville	I-80 Stroudsburg.
US 219	PA 601 N. of Somerset.	US 422 W. Int.
US 219	South Bradford Int	NY State Line.
US 220	Turnpike Int. 11	King.
US 220	End of lim. acc. Linden.	I-180/US 15 Williamsport.
US 220	PA 199 S. of Athens	NY State Line NY 17.
US 222	US 422 N. Int. Reading.	PA 61 S. of Tuckerton.
US 222	US 30 Lancaster	Turnpike Int. 21.
US 322	NJ State Line (Comm. Barry Br.).	I-95 Chester.
US 322	I-83/283	US 422/PA 39 Hershey.
US 422	US 322/PA 39 Hershey.	Hockersville Rd. Hershey.
US 422	US 422 Bus. Reiffton	US 422 Bus. Wyomissing.
PA 3	US 202	Garrett Rd. Upper Darby.
PA 9	Turnpike Int. 25	I-81 Int. 58 N. of Scranton.
PA 28	PA 8	Creighton.
PA 33	US 22 Easton	I-80.
PA 42	I-80 Int. 34	US 11 Bloomsburg.
PA 51	US 119 Uniontown	Monongahela Riv. Elizabeth.
PA 54	I-80 Int. 33	US 11 Danville.
PA 60	PA 51 Beaver Falls	US 22.
PA 60-US 422.	I-80 Int. 1	1 Mile E. of PA 65 New Castle.
PA 61	US 222 S. of Tuckerton.	I-78 Int. 9.
PA 93	I-81 Int. 41	PA 924 Hazelton.
PA 114	US 11 Hogestown	I-81 Int. 18.
PA 132	I-95 Cornwells Heights.	Turnpike Int. 28 (via US 1 Connection).
PA 283	I-283 Int. 2	US 30 Lancaster.
PA 924	I-81 Int. 40	PA 93 Hazelton.
Airport Access (SR 3032).	PA 283	Harrisburg International Airport.
Harrisburg Exp. (Sr 2022).	US 11/15	I-83 Int. 20.
Reading Outer Loop (SR 3055).	PA 183 Leinbachs	US 222.

Puerto Rico

PR 1	PR 2 Ponce	PR 52 Ponce.
PR 2	PR 22 San Juan	PR 1 Ponce.
PR 3	N. Ent. Roosevelt Roads Naval Sta..	PR 26 Carolina.
PR 18	PR 52 San Juan	PR 22 San Juan.
PR 22	PR 26 San Juan	PR 165 Toa Baja.
PR 26	PR 22 San Juan	PR 3 Carolina.
PR 30	PR 52 Caguas	PR 3 Humacao.
PR 52	PR 1 Ponce	PR 18 San Juan.
PR 165	PR 22 Toa Baja	PR 2 Toa Baja.

Note: Routes added to the Interstate System under 23 U.S.C. 139(c) are included only to the extent designated above.

Rhode Island

RI 10	RI 195 Providence	I-95 Cranston.
RI 37	I-295 Cranston	I-95 near Lincoln Park.
RI 146	I-95 Providence	I-295 N. of Lime Rock.
RI 195	I-295 Johnston	RI 10 Providence.

South Carolina

US 15/401	NC State Line	US 52 Society Hill.
US 17	I-95 Pocotaligo	US 21 Gardens Corner.
US 17	I-26 Charleston	NC State Line.
US 21	US 17 Gardens Corner.	SC 170 Beaufort.
US 25	NC State Line	US 78 North Augusta (via Greenwood Bypass).
US 52	US 15/401 Society Hill.	End of 4-ln. div. N. of urban limits of Kingstree.
US 52	US 17 A1t. S. Int. Moncks Corner.	I-26 Exit 208 N. Charleston connector.
US 76	US 52 Florence	SC 576 Marion.
US 76	SC 277 Columbia	I-126 Columbia.
US 78	GA State Line	I-95 St. George.
US 78	I-26 Exit 205 N. Charleston.	US 52 N. Charleston.
US 123	Bibb St. Westminister	US 25 Greenville.
US 21/178 Bypass.	US 601 Orangeburg	Orangeburg.
US276	I-385 Simpsonville	I-85 Greenville.
US 301	US 321 Ulmer	I-95 Santee.
US 321	I-26 S. of Columbia	I-95 Hardeeville.
US 378	SC 262 Columbia	US 501 Conway.
US 501	SC 576 Marion	US 17 Myrtle Beach.
US 601	NC State Line	SC 151 Pageland.
US 601	I-26 Jamison	US 21/178 Bypass Orangeburg.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
SC 72	US 25 Byp. Greenwood.	I-77 Exit 61 (via SC 72 Byp.-US 21 BR-US 21 Rock Hill).
SC 121	SC 72 Whitmire	US 25 Trenton.
SC 151	US 601 Pageland	US 52 Darlington.
SC 277	I-77 Columbia	US 76 Columbia.
SC 576	US 76 Marion	US 501 Marion.
South Dakota		
No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.		
Tennessee		
US 25E	I-81	VA State Line Cumberland Gap.
US 27	End of I-124 Chattanooga.	US 127 Chattanooga.
US 27	TN 153 Chattanooga	KY State Line Winfield.
US 43	AL State Line St. Joseph.	US 64 Lawrenceburg.
US 45	MS State Line	US 45 Bypass S. Int. Jackson.
US 45 Bypass-US 45W.	US 45 S. Int. Jackson.	US 51 Union City.
US 51	TN 300 Memphis	KY State Line Jackson Purchase Pkwy.
US 64	I-40 E. Int. Memphis	I-24 Monteagle.
US 70 Alt	US 79 Atwood	TN 22 Huntingdon.
US 70	TN 22 Huntingdon	TN 96 Dickson.
US 70	TN 155 Nashville	US 127 Crossville.
US 70S	TN 102 Smyrna	US 70/TN 111 Sparta.
US 72	AL State Line	I-24 Kimball.
US 74	I-75 Cleveland	NC State Line Isabella.
US 79	I-40 Memphis	KY State Line US 41 Guthrie.
US 127	US 27 Chattanooga	TN 27 W. Int.
US 127	TN 28 Dunlap	KY State Line Static.
US 231	AL State Line S. of Fayetteville.	KY State Line N. of Westmoreland.
US 412	I-40 Jackson	US 51 Dyersburg.
US 641	I-40 near Natchez Trace State Park.	KY State Line N. of Paris.
TN 96	US 70 Dickson	I-40 E. of Dickson.
TN 153	I-75 Chattanooga	US 27 Chattanooga.
TN 155	I-40 Nashville	I-65 N. of Nashville.
TN 300	I-40 Memphis	US 51 Memphis.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
Texas		
No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.		
Utah		
No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.		
Vermont		
US 4	NY State Line	ECL Rutland.
US 7	End of 4-lane divided hwy. Wallingford.	US 4 N. Int. Rutland.
VT 9	I-91 Int. 3 N. of Brattleboro.	NH State Line.
Virginia		
US 11	I-81 Exit 53	0.16 Mi. N. of VA 645 Rockbridge Co.
US 11	US 220 Alt. N. Int	2.15 Mi. S. of VA 220 Alt. N. Int. Cloverdale
US 11	VA 100 Dublin	VA 643 S. of Dublin.
US 11	1.52 Miles N. of VA 75.	US 19 N. Int. Abington.
US 13	MD State Line	I-64 Exit 79 Norfolk.
US 17	US 29 Opal	VA 2/US 17 BR New Post.
US 17	VA 134 York Co	I-64 Exit 62 Newport News.
US 17 BR/VA 2.	SCL Fredricksburg	US 17 New Post.
US 19	I-81 Exit 7 (via VA 140) Abingdon.	US 460 N. Int./VA 720 Bluefield.
US 23	TN State Line	US 58 Alt: Big Stone Gap.
US 23	0.33 Mi. N. of US 23 BR Norton.	KY State Line.
US 25E	TN State Line Cumberland Gap TN.	KY State Line.
US 29	NC State Line	I-66 Exit 11 Gainesville.
US 33	N. Carlton St. Harrisonburg.	US 340 Elkton.
US 33	I-295 Henrico Co	0.96 Mile W. of I-295 Hanover Co.
US 50	VA 259 Gore	VA 37 Frederick Co.
US 50	Apple Blossom Loop Rd. W. of I-81.	I-81 Exit 80 Winchester.
US 58	VA 721 W. of Martinsville.	US 220 BR N. Int. Martinsville.
US 58	S. Fairy St. Martinsville.	WCL Emporia.
US 58	0.6 Mile E. of ECL Emporia.	VA 35 S. Int. Courtland.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 58	US 58 BR E. of Courtland.	US 13/I-264 Bowers Hill.
US 58 Alt	US 23 Norton	US 19 Hansonville.
US 58 Alt	0.40 Mile W. of US 11.	I-81 Exit 8 Abingdon.
US 58 BR	VA 35 Courtland	US 58 E. of Courtland.
US 58	W. Int. VA 337/ Claremont Ave.	US 460/St. Paul's Blvd. Norfolk.
US 60	0.03 Mile W. of VA 887 Chesterfield Co.	US 522 Powhatan.
US 220	NC State Line	I-581 Roanoke.
US 220	I-81 Exit 44	SCL Fincastle.
US 220 BR	US 220 S. Int.	0.16 Mi. N. of VA 825 S. of Martinsville.
US 220 BR	US 58 N. Int. Martinsville.	US 220 N. Int. Bassett Forks.
US 250	US 340 E. Int. Delphine Avenue.	VA 254 Waynesboro.
US 250	I-81 Exit 57	VA 261 Statler Blvd. Staunton.
US 258	NC State Line	US 58 Franklin.
US 258	VA 10 Benns Church	VA 143 Jefferson Ave. Newport News.
US 301	VA 1250 S. of I-295	I-295 Hanover Co.
US 301	US 301 BR N. Int. Bowling Green.	MD State Line.
US 340/522	I-66 Exit 2 Front Royal.	2.85 Miles N. of I-66.
US 340	VA 7 Berryville	WV State Line.
US 360	US 58 South Boston	VA 150 Chesterfield Co.
US 360	I-64 Exit 44 Richmond.	VA 627 Village.
US 460	VA 67 W. Int. Raven	US 19 Claypool Hill.
US 460	VA 720 Bluefield	WV State Line Bluefield.
US 460	WV State Line	I-81 Exit 37 Christiansburg.
US 460	I-581 Roanoke	0.08 Mile E. of VA 1512 Lynchburg.
US 460	US 29 Lynchburg	1 Mile W. of VA 24 Appomattox Co.
US 460	0.64 Mile E. of VA 707 Appomattox Co.	I-85 Exit 12 Petersburg.
US 460	I-95 Petersburg	US 58 Suffolk.
US 501	VA 360 S. Int. Halifax	US 58 South Boston.
US 522	0.60 Mile S. of US 50	US 50 Frederick Co.
US 522	VA 37 Frederick Co	1.07 Miles N. of VA 705 Cross Junction.
VA 3	US 1 Fredericksburg	VA 20 Wilderness.
VA 7	I-81 Exit 81 Winchester.	0.68 Mile W. of WCL Round Hill.
VA 10	VA 58 Suffolk	VA 666 Smithfield.
VA 10	ECL Hopewell	0.37 Mile W. of W. Int. VA 156 Hopewell.
VA 10	US 1 Chesterfield Co	VA 827 W. of Hopewell.
VA 20	I-64 Exit 24	Carlton Rd. Charlottesville.
VA 30	I-95 Exit 40 Doswell	US 1.
VA 33	I-64 Exit 52	VA 30 E. Int. West Point.
VA 36	I-95 Petersburg	VA 156 Hopewell.
VA 37	I-81 Exit 79 S. of Winchester.	I-81 Exit 82 (via US 11) N. of Winchester.
VA 42	VA 257 S. Int. Bridgewater.	VA 290 Dayton.
VA 57	VA 753 Bassett	US 220 Bassett Forks.
VA 86	US 29 Danville	NC State Line.
VA 100	I-81 Exit 32	US 11 Dublin.
VA 105	US 60 Newport News	I-64 Exit 60.
VA 114	US 460 Christiansburg.	0.09 Mile E. of VA 750 Montgomery Co.
VA 156	VA 10 W. Int. Hopewell.	VA 36 Hopewell.
VA 199	US 60 Williamsburg	I-64 Exit 57.
VA 207	I-95 Exit 41	0.20 Mile S. of VA 619 Milford.
VA 220 Alt	US 11 N. Int. N. of Cloverdale.	I-81 Exit 44/US 220.
VA 277	I-81 Exit 78 Stephens City.	1.60 Miles E. of I-81 Exit 78.
VA 419	I-81 Exit 41 Salem	Midland Ave. Salem.
VA 624	I-64 Exit 18	Old SCL Waynesboro.
Commonwealth Blvd.	Market St. Martinsville.	N. Fairy St. Martinsville.

Note 1: I-66 Washington DC area—There is a 24 hour total truck ban on I-66 from I-495 Capital Beltway to the District of Columbia. (Excepted under 23 CFR 658.11(f).)

Note 2: I-264 Norfolk—Truck widths may be limited to 96 inches for the westbound tube of the Elizabeth River Downtown Tunnel from Norfolk to Portsmouth because of clearance deficiencies.

Washington

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

West Virginia

US 19	I-77 Bradley	I-79 Gassaway.
US 35	WV 34 Winfield	OH State Line.
US 48	I-79 Morgantown	MD State Line.
US 50	I-77 Parkersburg	I-79 Clarksburg.
US 460	VA State Line Bluefield.	VA State Line Kelleysville.
WV 34	I-64 Putnam Co	US 35 Winfield.

Wisconsin

US 2	I-535/US 53 Superior.	MI State Line Hurley.

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APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY-DESIGNATED ROUTES—Continued

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional Federal-aid Primary highways]

Route	From	To
US 2	MI State Line W. of Florence.	MI State Line E. of Florence.
US 8	US 63 Turtle Lake	MI State Line Norway MI.
US 10	US 53 Osseo	I-43 Manitowoc.
US 12	I-94/CH "EE" W. of Eau Claire.	US 53 Eau Claire.
US 12	I-90/94 Lake Delton	End of 4-lane S. of W. Baraboo.
US 12	WI 67 S. Jct. Elkhorn	IL State Line Genoa City.
US 14	US 51 N. of Janesville.	I-90 Janesville.
US 14	WI 11/89 N. of Darien.	I-43 Darien.
US 18	IA State Line Prairie Du Chien.	I-90 Madison.
US 41	National Ave. Milwaukee.	Garfield Ave. Milwaukee.
US 41	107th St. Milwaukee	MI State Line Marinette.
US 45	IL State Line Bristol	WI 28 Kewaskum.
US 45	WI 29 Wittenberg	MI State Line Land O'Lakes.
US 51	SCL Janesville	US 14 Janesville.
US 51	WI 78 N. of Portage	US 2 Hurley.
US 53	US 14/61 La Crosse	US 10 Osseo.
US 53	I-94 Eau Claire	I-535/US 2 Superior.
US 61	IA State Line Dubugue IA.	MN State Line La Crosse (via WI 129 Lancaster Byp.).
US 63	MN State Line Red Wing MN.	US 2 W. of Ashland.
US 141	US 41 Abrams	US 8 Pembine.
US 151	IA State Line Dubugue IA.	US 18 E. of Dodgeville.
US 151	I-90/94 Madison	US 41 Fond Du Lac.
WI 11	IA State Line Dubuque IA.	US 51 Janesville.
WI 11	I-90 Janesville	US 14/WI 89 N. of Darien.
WI 11	I-43 Elkhorn	WI 31 Racine.
WI 13	WI 21 Friendship	US 2 Ashland.
WI 16	WI 78 Portage	I-94 Waukesha.
WI 17	US 8 Rhinelander	US 45 Eagle River.
WI 20	I-94 Racine	WI 31 Racine.
WI 21	WI 27 Sparta	US 41 Oshkosh.
WI 23	WI 32 N. of Sheboygan Falls.	Taylor Dr. Sheboygan.
WI 26	I-94 Johnson Creek	WI 16 Watertown.
WI 26	US 151 Waupun	US 41 SW. of Oshkosh.
WI 27	US 14/61 Westby	US 10 Fairchild.
WI 28	US 41 Theresa	US 45 Kewaskum.
WI 29	I-94 Elk Mound	US 53 Chippewa Falls.
WI 29	WI 124 S. of Chippewa Falls.	US 41 Green Bay.
WI 30	US 151 Madison	I-90/94 Madison.
WI 31	WI 11 Racine	WI 20 Racine.
WI 32	WI 29 W. of Green Bay.	Gillett.
WI 34	WI 13 Wisconsin Rapids.	US 51 Knowlton.
WI 42	I-43 Manitowoc	WI 57 SW. of Sturgeon Bay.
WI 47	US 10 Appleton	WI 29 Bonduel.
WI 50	I-94 Kenosha	45th Ave. Kenosha.
WI 54	WI 13 Wisconsin Rapids.	US 51 Plover.
WI 57	I-43 Green Bay	Sturgeon Bay.
WI 69	WI 11 Monroe	CH "PB" Paoli.
WI 73	US 51 Plainfield	WI 54 Wisconsin Rapids.
WI 78	I-90/94 S. of Portage	US 51 N. of portage.
WI 80	WI 21 Necedah	WI 13 Pittsville.
WI 119	I-94 Milwaukee	WI 38 Milwaukee.
WI 124	US 53 N. of Eau Claire.	WI 29 S. of Chippewa Falls.
WI 139	US 8 Cavour, Forest Co.	Long Lake.
WI 145	Broadway Milwaukee	US 41/45 Milwaukee.
WI 172	US 41 Ashwaubenon	CH "x" S. of Green Bay.
CH "PB"	WI 69 Paoli	US 18/151 E. of Verona.

Wyoming

No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

Note: Information on additional highways on which STAA-dimensioned vehicles may legally operate may be obtained from the respective State highway agencies.

[55 FR 17953, Apr. 30, 1990; 55 FR 19145, May 8, 1990]

APPENDIX B TO 658—GRANDFATHERED SEMITRAILER LENGTHS

State	Feet and inches
Alabama	53-6
Alaska	48-0
Arizona	57-6
Arkansas	53-6
California	[1] 48-0
Colorado	57-4
Connecticut	48-0
Delaware	53-0
District of Columbia	48-0
Florida	48-0
Georgia	48-0
Hawaii	48-0
Idaho	48-0
Illinois	53-0
Indiana	[2] 48-6

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APPENDIX B TO 658—GRANDFATHERED SEMITRAILER LENGTHS—Continued

State	Feet and inches
Iowa	53–0
Kansas	57–6
Kentucky	53–0
Louisiana	59–6
Maine	48–0
Maryland	48–0
Massachusetts	48–0
Michigan	48–0
Minnesota	48–0
Mississippi	53–0
Missouri	53–0
Montana	53–0
Nebraska	53–0
Nevada	53–0
New Hampshire	48–0
New Jersey	48–0
New Mexico	57–6
New York	48–0
North Carolina	48–0
North Dakota	53–0
Ohio	53–0
Oklahoma	59–6
Oregon	53–0
Pennsylvania	53–0
Puerto Rico	48–0
Rhode Island	48–6
South Carolina	48–0
South Dakota	53–0
Tennessee	50–0
Texas	59–0
Utah	48–0
Vermont	48–0
Virginia	48–0
Washington	48–0
West Virginia	48–0
Wisconsin	[3] 48–0
Wyoming	57–4

[1] Semitrailers up to 53 feet may also operate without a permit by conforming to a kingpin-to-rearmost axle distance of 38 feet.

[2] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rearmost axle distance of 40 feet 6 inches.

[3] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rear axle distance of 41 feet, measured to the center of the rear tandem assembly.

[53 FR 2599, Jan. 29, 1988, as amended at 54 FR 1931, Jan. 18, 1989]

PART 659—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

Sec.

659.1 Purpose.
659.3 Objective.
659.5 Definitions.
659.7 Adoption of a national maximum speed limit.
659.9 Formulation of a plan for monitoring speeds.
659.11 Guidelines and evaluations of operations.
659.13 Certification requirement.
659.15 Certification content.
659.17 Certification and statistical submittal.
659.19 Effect of failure to certify or to meet compliance standards.
659.21 Procedures.

AUTHORITY: 23 U.S.C. 118, 141, 154, and 315, 49 CFR 1.48(b) and 1.50.

SOURCE: 45 FR 64491, Sept. 29, 1980, unless otherwise noted.

§ 659.1 Purpose.

To prescribe requirements for administering a program for monitoring speeds on public highways in order to provide reliable data to be included in a State's annual certification of speed limit enforcement.

§ 659.3 Objective.

To establish a valid statistical method of measuring a sample of vehicle speeds on a sample of highways to estimate the percentage of vehicles exceeding 55 miles per hour (mph) with sufficient accuracy to support a determination of compliance with 23 U.S.C. 154. A secondary objective is to quantify the overall statewide distribution of speeds by comparing other characteristics which may indicate the level of enforcement or public compliance, such as average speed, median speed, 85th percentile speed, and percentages of vehicles exceeding 60 and 65 miles per hour.

§ 659.5 Definitions.

As used in this part:

(a) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

(b) *Highway* means all streets, roads or parkways under the jurisdiction of a State, including its political subdivisions, open for use by the general public, and including toll facilities.

(c) *Motor vehicle* means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

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(d) *Posted* means those roads with a legal speed limit of 55 mph, excluding any unpaved roads and roads in the following functional classifications: Urban collector and local streets; rural local roads; and rural minor collectors. This includes both State-maintained and non-State-maintained roads, including toll roads.

[45 FR 64491, Sept. 29, 1980, as amended at 54 FR 32968, June 16, 1989]

§ 659.7 Adoption of a national maximum speed limit.

The Secretary of Transportation shall not approve any Federal-aid projects under 23 U.S.C. 106 in a State which fails to adopt or maintain maximum speed limits as follows:

(a) The maximum speed limit on a highway either on the Interstate System, or designated for participation in the demonstration program established by section 329 (a) of Pub. L. 100-202, and located outside of an urbanized area of 50,000 population or more, shall be 65 mph or less. The maximum speed limit on all other highways in the State shall be 55 mph or less. Emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health or safety.

(b) Except as provided in paragraphs (c) and (d) of this section, the speed limit on any portion of a highway shall be uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of vehicles using it.

(c) Notwithstanding the provisions of paragraph (b) of this section, a State may establish a lower speed limit for a motor vehicle operating under a special permit because of weight or dimension of such vehicle, including any load thereon.

(d) Nothwithstanding the provisions of paragraph (b) of this section, a State may specify nonuniform speed limits on any portion of a highway when the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

[45 FR 64491, Sept. 29, 1980, as amended at 54 FR 25570, June 16, 1989]

§ 659.9 Formulation of a plan for monitoring speeds.

(a) Each State shall develop a speed sampling and analysis plan following the guidelines set forth in the *Speed Monitoring Program Procedural Manual* (SMPPM), FHWA, 1980, which was published at 45 FR 64494 on September 29, 1980. Copies of the SMPPM are available from the U.S. Department of Transportation, Federal Highway Administration, Office of Traffic Operations, Washington, DC 20590. The SMPPM is also available for inspection at the FHWA offices listed in 49 CFR part 7, appendix D.

(b) The plan shall discuss the following subjects as a minimum:

(1) Functional grouping of highways to be used:

(i) The functional class groupings of highways will be used to distribute the monitoring effort.

(ii) The groupings of functional classes of highway for the speed monitoring program shall be: *urban* (Interstate, other freeways and expressways, and other principal and minor arterials) and *rural* (Interstate, other principal and minor arterials, and major collector roads).

(2) Miles of highway with a 55 mph speed limit, by functional group:

(i) Miles of highway with a 55 mph speed limit shall be used in the selection of speed monitoring locations.

(ii) The proportion of paved highway mileage in each grouping subject to the 55 mph speed limit shall be determined by each State.

(3) Distribution of travel (VMT or DVMT) on highways with a 55 mph speed limit. The VMT by functional system shall be used to distribute the data collection effort and in the calculation of the statewide percent of vehicles exceeding 55 mph.

(4) Sources of speed data used in calculating sample size (default values or data from previous monitoring).

(5) Number of sampling locations and sessions and their distribution by system and geographic area, all of which shall be determined in accordance with the SMPPM. A sampling session shall consist of a single period

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of monitoring at a partiular place (sampling location).

(i) The minimum sample size needed by each State shall be determined under both (A) the accuracy of statistical estimates concept and (B) the coverage of population sampled concept. Both concepts are fully explained in the SMPPM. The larger of the two numbers shall be used as the statewide minimum sample size.

(ii) A 24-hour monitoring period shall be the minimum duration of any individual sampling session.

(6) Type and capabilities of speed measuring equipment to be used.

(7) Data collection.

(i) Schedule—a detailed schedule shall distribute speed monitoring sessions evenly among the days of the week and the three month periods of the year ending December 31, March 31, June 30, and September 30.

(ii) Field data collection—the goal is to obtain, during each monitoring session, a representative record of the traffic speeds that normally occur in a given segment. Therefore, the choice of a data collection site within a given segment should reflect the geometric design conditions of the segment. In addition, the collection of data should not be attempted and data will not be acceptable in determining compliance, if conditions at a site are such that the normal flow of traffic is substantially restricted by activities such as roadway construction or maintenance operations, extreme weather conditions, temporary lane closings, or the presence of non-routine enforcement activity.

(8) Any deviation from the analysis methods described in the SMPPM.

(c) The guidelines set forth in the SMPPM rely on many assumptions. After a complete year's data are available, and thereafter on an annual basis, the plan shall be evaluated to determine its effectiveness in meeting the objective of the speed monitoring program. As a minimum, the evaluation shall discuss:

(1) The actual accuracy level obtained with regard to the statewide value for the percent exceeding 55 mph.

(2) Adjustments to the number of sampling locations in a state.

(3) The validity of the travel figures (vehicle miles of travel (VMT) or daily vehicle miles of travel (DVMT)) used.

(4) Any other changes to the plan proposed by the State.

(Approved by the Office of Management and Budget under control number 2125-0027)

[45 FR 64491, Sept. 29, 1980, as amended at 46 FR 21157, Apr. 9, 1981; 54 FR 25570, June 16, 1989]

§ 659.11 Guidelines and evaluations of operations.

(a) The State shall submit its initial plan to the FHWA Division Administrator for approval by November 14, 1980. The plan shall be evaluated annually and revised as conditions and new data indicate. The plan may also be revised at any time during the 12 month data collection period ending September 30 if the State elects to change its speed limit on eligible roads.

(b) Annual evaluations shall be submitted to the FHWA Division Administrator for approval by December 1 following the close of the data collection period of each year beginning with December 1, 1981, so that changes to the plan called for by the evaluation can go into effect with the subsequent quarter beginning January 1. Plan revisions called for during the data collection period due to a State changing its speed limit shall also be submitted to the FHWA Division Administrator for approval, and may take effect retroactively to the date on which the speed limit was changed if such approval is granted.

[52 FR 28693, Aug. 3, 1987]

§ 659.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

[54 FR 25570, June 16, 1989]

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§ 659.15 Certification content.

The certification shall consist of the following elements:

(a)(1) A statement by the Governor of the State, or an official designated by the Governor, that the National Maximum Speed Limit on public highways in the State is being enforced. The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of ————, do hereby certify that the (State or Commonwealth) of ————, is enforcing the National Maximum Speed Limit.

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

(b) A copy of any State law, regulation, administrative order, statement of policy or any other written instruction relating to enforcement of the 55-mph National Maximum Speed Limit, which has not been included in earlier certifications, or a statement that there have been no changes to any such documents previously submitted. If a written enforcement agency policy on the 55 mph speed limit does not exist, a statement to that effect must also be included.

(c) Information relating to enforcement and monitoring as follows:

(1) Miles of highway with a 55 mph speed limit, by functional group.

(2) The number of citations issued by State agencies for violation of the 55 mph speed limit during each month of the 12-month period ending on September 30 before the date by which certification is required.

(d) The statewide percentage of vehicles exceeding the 55 mph speed limit as derived from the speed sampling plan discussed in § 659.9, and adjusted to take into account variability of speedometer readings. The allowable adjustment shall be calculated using either of the two following procedures:

(1) This procedure includes separate adjustments for each of three potential error sources. First, Speedometer Variability.

Let:

A=the percent of vehicles exceeding 55 mph derived from the speed sampling plan required by § 659.9.

B=the percent exceeding 60 mph derived from the speed sampling plan required by § 659.9.

C=(A−B)

Let:

D=the percent exceeding 55 mph, adjusted for the first part of speedometer variability.

D=.7(C)+B

Second, Statistical Error.

Let:

E=the percent exceeding 55 mph, adjusted for the first and second part of speedometer variability.

$E=D-(t_{.95,n})\,s(Pst)$.

Where $(t_{.95_n})$ and $s(P_{st})$ are as defined in the SMPPM.

Third, Speed Monitoring Equipment Error

Let:

F=a correction for speed measuring equipment error. (Derivation and use of an equipment error correction is subject to approval by the FHWA.)

G=the percent exceeding 55 mph, fully adjusted to account for variability of speedometer readings.

G=E−F

(2) This procedure accounts for all three error sources discussed in paragraph (d)(1) with a single adjustment.

Let:

A=the percent of vehicles exceeding 55 mph derived from the speed sampling plan required by § 659.9.

B=the percent exceeding 60 mph derived from the speed sampling plan required by § 659.9.

H=the percent exceeding 55 mph, fully adjusted to account for variability of speedometer readings using a single adjustment.

$$H=\frac{A+B}{2}$$

[45 FR 64491, Sept. 29, 1980, as amended at 54 FR 25570, June 16, 1989]

§ 659.17 Certification and statistical submittal.

(a) The Governor, or an official designated by the Governor, each year shall submit the certification to the local FHWA Division Administrator. The FHWA Division Administrator

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shall retain the original and forward two copies each to the Regional Administrator of NHTSA and FHWA. The Regional Administrators shall each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington Headquarters, attention of the Chief Counsel.

(b) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded shall be submitted in the same manner as the original (see § 659.17(a)).

(c) As described in § 659.15(d), the statewide percentage of vehicles exceeding 55 mph is the only direct result of the speed monitoring program that is required for inclusion in the annual certification. However, additional summary statistics from the speed monitoring program are necessary in order to provide a complete review of each State's speed monitoring program. Therefore, a report of the average speed, median speed, 85th percentile speed, and percent of vehicles exceeding 55, 60, and 65 miles per hour shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3 month periods ending December 31, March 31, June 30, and September 30 of each year. The submittal for the July-September quarter shall, in addition to the quarterly report, include a summary report of the entire year's speed monitoring data (starting from the previous October 1).

(Approved by the Office of Management and Budget under control number 2125-0027)

[45 FR 64491, Sept. 29, 1980, as amended at 54 FR 25571, June 16, 1989]

§ 659.19 Effect of failure to certify or to meet compliance standards.

(a) If a State fails to certify as required by § 659.13, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Except as provided by subsection (e), notwithstanding the proper submission of a certification and information supporting the enforcement activities of any State, if the Department determines that the percentage of motor vehicles exceeding 55 mph on roads posted at 55 mph is greater than 50 percent, funds apportioned to that State under 23 U.S.C. 104(b)(1), 104(b)(2), and 104(b)(6) shall be reduced an aggregate amount of up to 10 percent for the fiscal year subsequent to the fiscal year in which the certification is submitted, or for the following fiscal year in the event of a hardship determination.

(c) Where a reduction in apportioned funds pursuant to paragraph (b) of this section will result in a hardship to a State, the fiscal year apportionment reduced for such State shall be the apportionment for one fiscal year later than set forth in paragraph (b) of this section. The State must submit a claim of hardship in writing supported by sound reasoning and indications that corrective or remedial measures are to be undertaken to improve the State's compliance posture. Hardship under this paragraph relates to adverse impacts (e.g., economic or environmental) which would result from a delay in the letting of Federal-aid highway projects.

(d) Funds withheld pursuant to this part shall be apportioned to a State, subject to availability of such funds under 23 U.S.C. 118(b)(1), upon a determination by the Department that the percentage of motor vehicles exceeding 55 mph on roads posted at 55 mph in such State, as adjusted in accordance with § 659.15(d), has dropped to 50 percent or lower. One complete fiscal year's speed monitoring results will be required to make such a determination.

(e) If a final decision under the procedures of § 659.21 has not been made for any State before the beginning of the fiscal year following the certification required by this part, the Secretary may apportion 100 percent of the funds for that fiscal year to that State. However, ten percent of the funds apportioned to such a State under 23 U.S.C. 104(b)(1), 104(b)(2) and 104(b)(6) shall be reserved from obligation, pending a final decision under § 659.21.

[45 FR 64491, Sept. 29, 1980, as amended at 54 FR 25571, June 16, 1989]

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§ 659.21 Procedures.

(a) If the data submitted by a State, or other information available to the Department, shows that the percentage, as adjusted, of motor vehicles exceeding 55 mph on roads posted at 55 mph in the State is greater than 50 percent, the Administrators of the FHWA and NHTSA shall make a proposed determination of noncompliance and shall notify the Governor of the State of that proposed determination by certified mail.

(b) Within 30 days from the date of receipt of the Administrators' letter, the State may request a meeting to discuss compliance status and, if applicable, the amount and timing of any reduction of apportionments. The meeting will be held with the Administrators and/or their representatives A transcript of that meeting will be prepared. If the State does not request a meeting, it may, within 30 days of its receipt of the letter, submit a written response for consideration by the Department. Documents also may be submitted prior to, or at, the meeting if one is requested. The request for a meeting and/or additional written documentation shall be submitted to the Administrators of the NHTSA and the FHWA, jointly. Requests for extension of time to comply with these response requirements shall also be submitted to the Administrators, and shall include a statement of the basis for the request.

(c) If a State wishes to request a hardship deferral and/or request that its apportionments be reduced by an amount less than ten percent in the event of a determination of noncompliance, it shall advise the Administrators of the basis for its request at or prior to the meeting referred to in subsection (b) of this section or in its written response to the Administrators' letter.

(d) The State may offer any information that it considers helpful to the Department's consideration of the matter of sanctions, including, but not limited to, legislative actions, budgetary considerations, judicial actions, past and current operational enforcement programs, as well as proposals for specific new programs.

(e) On the basis of the information provided by the State and other information in the possession of the Department, the Secretary will issue a final decision, in writing, regarding the State's compliance and, if applicable, the amount and timing of any reduction of apportionments. A copy of that decision will be transmitted promptly to the State.

[54 FR 25571, June 16, 1989]

PART 660—SPECIAL PROGRAMS (DIRECT FEDERAL)

Subpart A—Forest Highways

Sec.

660.101 Purpose.
660.103 Definitions.
660.105 Designation of forest highways.
660.107 Allocations.
660.109 Program and project selection.
660.111 Agreements.
660.113 Construction.
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Subparts B—D [Reserved]

Subpart E—Defense Access Roads

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660.503 Objectives.
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660.511 Eligibility.
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660.519 Missile installations and facilities.

Subpart A—Forest Highways

AUTHORITY: 16 U.S.C. 1608-1610; 23 U.S.C. 101, 204, 315; 49 CFR 1.48(b).

SOURCE: 47 FR 10527, Mar. 11, 1982, unless otherwise noted.

§ 660.101 Purpose.

To enhance local, regional, and national benefits by providing for the construction and maintenance of forest highways which serve the National Forest System and its renewable resources.

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§ 660.103 Definitions.

In addition to the definitions in 23 U.S.C. 101(a), the following apply to this subpart:

(a) *Cooperator*—a State or local government agency which has jurisdiction over and/or maintenance responsibility for forest highways.

(b) *Forest highway*—a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

(c) *Forest road*—a road wholly or partly within, or adjacent to, and serving the National Forest System and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

(d) *National Forest System (NFS)*—lands and facilities administered by the Forest Service (FS), U.S. Department of Agriculture, as set forth in the National Forest Management Act of 1976, as amended (16 U.S.C. 1609(a)).

(e) *Open to public travel*—except during scheduled periods, extreme weather conditions, or emergencies, open to the general public for use with a standard passenger auto, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

(f) *Renewable resources*—those matters within the scope of responsibilities and authorities of the FS as defined in the National Forest Management Act of 1976, as amended (16 U.S.C. 1610), such as recreation, wilderness, wildlife and fish, range, timber, land, water, and human and community development.

§ 660.105 Designation of forest highways.

(a) The Federal Highway Administration (FHWA), in consultation with the FS and cooperators, where appropriate, will designate forest highways from the forest roads which serve the NFS in each State.

(1) The State highway administration (SHA) will represent the State and county interest. All counties should send their proposals to the State.

(2) The SHA and the FS will be able to nominate roads for forest highway designation.

(b) A forest road designated as a forest highway for purposes of this subpart will meet the following criteria:

(1) It is under the jurisdiction of a cooperator and open to public travel.

(2) It provides a connection between an adequate and safe public road and the renewable resources of the NFS which are essential to the local, regional, or national economy, and/or the communities, shipping points, or markets which depend upon those renewable resources.

(3) It serves other local needs such as schools, mail delivery, commercial supply, and access to private property within the NFS, or serves traffic of which a preponderance is generated by use of the NFS and its resources, or serves NFS generated traffic volumes that have a substantial impact on roadway design and construction.

§ 660.107 Allocations.

On October 1 of each fiscal year, the FHWA will allocate funds for forest highways using values based on relative transportation needs of the various elements of the national forest system, after deducting such sums as deemed necessary for the administrative requirements of the FHWA; the necessary expenses of the FS; and the necessary costs of forest highway planning studies.

[49 FR 40011, Oct. 12, 1984]

§ 660.109 Program and project selection.

(a) For each fiscal year that funds are apportioned for forest highways, the FHWA will request that the FS and the State highway agency (acting for all cooperators in the State) each submit a list of projects proposed for financing with such funds, listed in order of priority.

(b) Following receipt of the lists of projects, the FHWA will conduct a joint conference with the FS and the SHA to resolve any disagreements and to select the projects which will be included in the programs for the current fiscal year and at least the next four years. If there are no disagreements, a

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conference will not be required. Projects included in each year's program will be jointly selected based upon the following criteria:

(1) The development, utilization, protection and administration of the NFS and its renewable resources.

(2) The enhancement of economic development at the local, regional, and national level.

(3) The continuity of the transportation network serving the NFS and its dependent communities.

(4) The mobility of the users of the transportation network and the goods and services provided.

(5) The improvement of the transportation network for economy of operation and maintenance and the safety of its users.

(6) The protection and enhancement of the rural environment associated with the NFS and its renewable resources.

(c) The recommended program of projects will be prepared by the FHWA and submitted to the FS and SHA for concurrence. The FHWA will approve the program of projects. Following approval, the SHA shall advise any other cooperators in the State of the projects included in the final program. The SHA shall also determine the amount of State and local participation required for the funding of each project.

§ 660.111 Agreements.

(a) A forest highway agreement shall be entered into between the FHWA and each cooperator prior to the expenditure of any funds by the FHWA in the State, county, or other local jurisdiction involved. The forest highway agreement shall set forth the responsibilities of each party, including that of adherence to the applicable provisions of Federal statutes and regulations.

(b) A project agreement implementing the forest highway agreement shall be entered into between the FHWA and the cooperator involved under one or more of the following conditions:

(1) A cooperator's funds are to be made available to the FHWA for the project or any portion of the project.

(2) Federal funds are to be made available to a cooperator for any work.

(3) Special circumstances exist which make a project agreement necessary for payment purposes or to clarify any aspect of the project.

§ 660.113 Construction.

(a) Forest highway projects will be constructed or adminstered by the FHWA unless otherwise provided for in an agreement with the cooperator approved under this subpart.

(b) Projects to be constructed or administered by the FHWA will be developed in accordance with FHWA procedures including the appropriate environmental procedures in subchapter H of this chapter and the Nationwide Action Plan for the Direct Federal Program.[1] Projects to be constructed or administered by a cooperator shall be developed in accordance with Federal-aid procedures including the appropriate environmental procedures in subchapter H of this chapter.

(c) No construction shall be undertaken on any forest highway project until plans, specifications and estimates have been concurred in by the cooperator and the FS and approved by the FHWA.

(d) Forest highway projects shall be designed in accordance with part 625 of this chapter or those criteria specifically approved by the FHWA for a particular project.

(e) The construction of forest highways will be performed by the contract method, unless construction by the FHWA or a cooperator on its own account is warranted under 23 U.S.C. 204(c).

(f) Construction of any project shall not be accepted by the FHWA as completed until the project has been inspected and approved by the cooperator, the FS, and the FHWA.

§ 660.115 Maintenance.

The cooperator having jurisdiction over a forest highway shall have the responsibility for maintaining it, unless otherwise provided for in an

[1] Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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agreement approved under this subpart.

§ 660.117 Funding, records and accounting.

(a) The Federal share of funding for eligible forest highway projects may be any amount up to and including 100 percent. A cooperator may participate in the cost of construction, but participation shall not be required.

(b) Forest highway funds shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities.

(c) Use of forest highway funds for right-of-way acquisition or maintenance shall be subject to specific approval by FHWA.

(d) Cooperators which administer construction of forest highway projects and the SHA's shall maintain their forest highway records according to the provisions of part 17 of this chapter.

(e) Funds provided to the FHWA by a cooperator in advance of construction will be deposited in the Treasury of the United States to the credit of "Cooperative Work, Forest Highways, Federal Highway Administration."

Subparts B—D [Reserved]

Subpart E—Defense Access Roads

AUTHORITY: 23 U.S.C. 210, 315; 49 CFR 1.48(b).

SOURCE: 49 FR 21924, May 24, 1984, unless otherwise noted.

§ 660.501 Purpose.

The purpose of this regulation is to prescribe policies and procedures governing evaluations of defense access road needs, and administration of projects financed under the defense access roads and other defense related special highway programs.

§ 660.503 Objectives.

The defense access roads program provides a means by which the Federal Government may pay its fair share of the cost of:

(a) Highway improvements needed for adequate highway service to defense and defense related installations;

(b) New highways to replace those which must be closed to permit establishment or expansion of defense installations;

(c) Repair of damage to highways caused by major military maneuvers;

(d) Repair of damages due to the activities of contractors engaged in the construction of missile sites; and

(e) Missile routes to ensure their continued ability to support the missile transporter-erector (TE) vehicle.

§ 660.505 Scope.

This regulation focuses on procedures as they apply to the defense access roads and other special highway programs of the Department of Defense (DOD).

§ 660.507 Definitions.

(a) *Defense installation.* A military reservation or installation, or defense related industry or source of raw materials.

(b) *Military Traffic Management Command (MTMC).* The military transportation agency with responsibilities assigned by the Secretary of Defense for maintaining liaison with the Federal Highway Administration (FHWA) and other agencies for the integration of defense needs into the Nation's highway program.

(c) *Certification.* The statement to the Secretary of Transportation by the Secretary of Defense (or such other official as the President may designate) that certain roads are important to the national defense.

(d) *Access road.* An existing or proposed public highway which is needed to provide essential highway transportation services to a defense installation. (This definition may include public highways through military installations only when right-of-way for such roads is dedicated to public use and the roads are maintained by civil authority.)

(e) *Replacement road.* A public road constructed to replace one closed by establishment of a new, or the expansion of an old, defense installation.

(f) *Maneuver area road.* A public road in an area delineated by official orders for field maneuvers or exercises of military forces.

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(g) *Transporter-erector route.* A public road specifically designated for use by the TE vehicle for access to missile sites.

§ 660.509 General principles.

(a) State and local highway agencies are expected to assume the same responsibility for developing and maintaining adequate highways to permanent defense installations as they do for highways serving private industrial establishments or any other permanent traffic generators. The Federal Government expects that highway improvements in the vicinity of defense installations will receive due priority consideration and treatment as State and local agencies develop their programs of improvement. The FHWA will provide assistance, as requested by MTMC, to ascertain State program plans for improvements to roads serving as access to defense installations. Roads which serve permanent defense installations and which qualify under established critieria as Federal-aid routes should be included in the appropriate Federal-aid system.

(b) It is recognized that problems may arise in connection with the establishment, expansion, or operation of defense installations which create an unanticipated impact upon the long-range requirements for the development of highways in the vicinity. These problems can be resolved equitably only by Federal assistance from other than normal Federal-aid highway programs for part or all of the cost of highway improvements necessary for the functioning of the installation.

§ 660.511 Eligibility.

(a) The MTMC has the responsibility for determining the eligibility of proposed improvements for financing with defense access roads funds. The evaluation report will be furnished to MTMC for its use in making the determination of eligibility and certification of importance to the national defense. The criteria upon which MTMC will base its determination of eligibility are included in the Federal-Aid Highway Program Manual, Volume 6, Chapter 9, Section 5, Attachment 2.[1]

(b) If the project is determined to be eligible for financing either in whole or in part with defense access road funds, MTMC will certify the project as important to the national defense and will authorize expenditure of defense access road funds. The Commander, MTMC, is the only representative of the DOD officially authorized to make the certification required by section 210, title 23, U.S.C., in behalf of the Secretary of Defense.

§ 660.513 Standards.

(a) Access roads to permanent defense installations and all replacement roads shall be designed to conform to the same standards as the agency having jurisdiction is currently using for other comparable highways under similar conditions in the area. In general, where the agency having jurisdiction does not have established standards, the design shall conform to American Association of State Highway and Transportation Officials (AASHTO) standards. Should local agencies desire higher standards than are currently being used for other comparable highways under similar conditions in the area, they shall finance the increases in cost.

(b) Access roads to temporary military establishments or for service to workers temporarily engaged in construction of defense installations should be designed to the minimum standards necessary to provide service for a limited period without intolerable congestion and hazard. As a guide, widening to more than two lanes generally will not be undertaken to accommodate anticipated one-way, peak-hour traffic of less than 1,200 vehicles per hour and resurfacing or strengthening of existing pavements will be held to the minimum type having the structural integrity to carry traffic for the short period of anticipated use.

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[1] This document is available for inspection and copying from the FHWA headquarters and field offices as prescribed by 49 CFR part 7, appendix D.

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§ 660.515 Project administration.

(a) Determination of the agency best able to accomplish the location, design, and construction of the projects covered by this regulation will be made by the FHWA Division Administrator after consultation with the State and/or local highway agency within whose jurisdiction the highway lies. When an agency other than the State or local highway agency is selected to administer the project, the Division Administrator will be responsible during the life of the project for any necessary coordination between the selected agency and the State or local highway agency.

(b) Defense access road projects under the supervision of a State or local highway agency, whether on or off the Federal-aid system, shall be administered in accordance with Federal-aid procedures, as modified specifically herein or as limited by the delegations of authority to Regional and Division Administrators, unless approval of other procedures has been obtained from Washington Headquarters Office of Direct Federal Programs (HDF-1).

(c) The Division Administrator shall have a firm commitment from the State or local highway agency, within whose jurisdiction the access road lies, that it will accept the responsibility for maintenance of the completed facility before authorization of acquisition of right-of-way or construction of a project.

(d) When defense access road funds are available for a pro-rata portion of the total project cost, the remaining portion of the project may be funded as a Federal-aid project if on a Federal-aid route. Defense access road funds shall not be substituted for the State's matching share of the Federal-aid portion of a project.

§ 660.517 Maneuver area roads.

(a) Claims by a highway agency for costs incurred to restore, to their former condition, roads damaged by maneuvers involving a military force at least equal in strength to a ground division or an air wing will be paid from funds appropriated for the maneuver and transferred to FHWA by the DOD agency. Defense access road funds may be used to reimburse the highway authority pending transfer of funds by the DOD agency.

(b) Costs incurred by State or local highway authorities while conducting a pre- or post-condition survey may be included in the claim to DOD for direct settlement or in the damage repair project as appropriate.

§ 660.519 Missile installations and facilities.

Should damage occur to public highways as a result of construction activities, the contractor would normally be held responsible for restoring the damages. However, should the contractor deny responsibility on the basis of contract terms, restoration is provided for under 23 U.S.C. 210(h).

(a) *Restoration under the contract.* (1) The highway agency having jurisdiction over the road shall take appropriate actions, such as load and speed restrictions, to protect the highway. When extensive damage is anticipated and the contractor under the terms of the contract is responsible, it may be necessary to require a performance bond to assure restoration.

(2) If the contractor does not properly maintain the roads when requested in writing, the highway agency having jurisdiction over the road shall perform extraordinary maintenance as necessary to keep the roads serviceable and maintain adequate supporting records of the work performed. Claims shall be presented to the contractor for this extraordinary maintenance and any other work required to restore the roads. If the contractor denies responsibility on the basis of the contract terms, the claim with the required supporting documentation shall be presented to the contracting officer for disposition and arrangement for reimbursement.

(b) *Restoration under 23 U.S.C. 210(h).* (1) To implement 23 U.S.C. 210(h), DOD must make the determination that a contractor for a missile installation or facility did not include in the bid the cost of repairing damage caused to public highways by the operation of the contractor's vehicles and equipment. The FHWA must then make the determination that the State highway agency is, or has been,

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unable to prevent such damage by restrictions upon the use of the highways without interference with, or delay in, the completion of the contract. If these determinations are made, the Division Administrator will be authorized by the Washington Headquarters to reimburse the highway agency for the cost of the work necessary to keep the roads in a serviceable condition.

(2) Upon receipt of a damage claim, division office representatives accompanied by representatives of the agencies that made the original condition survey will inspect the roads on which damage is claimed. The Division Administrator shall then prepare an estimate of the cost of restoring the roads to original condition as well as any documented cost for extraordinary maintenance for which reimbursement has not been received. No allowance for upgrading the roads shall be included.

PART 661—GREAT RIVER ROAD

Sec.
661.1 Purpose.
661.2 Definitions.
661.3 Route designation.
661.4 Location criteria.
661.5 Project eligibility.
661.6 Design and construction.

AUTHORITY: Sec. 14, Pub. L. 83-350, 68 Stat. 70, May 6, 1954, 23 U.S.C. 148, 315; 49 CFR 1.48, unless otherwise noted.

SOURCE: 41 FR 52449, Nov. 30, 1976, unless otherwise noted.

§ 661.1 Purpose.

This regulation outlines procedures to be followed in the funding, programming and execution of a program for a National Scenic and Recreational Highway in the Mississippi River Valley known as the Great River Road.

§ 661.2 Definitions.

(a) *Construction*, as defined in 23 U.S.C. 101(a), and in addition means the acquisition of areas of historical, archeological, or scientific interest, necessary easements for scenic purposes and the construction or reconstruction of roadside rest areas (including appropriate recreational facilities), scenic viewing areas and other appropriate facilities as determined by the Secretary.

(b) *Great River Road*, a scenic and recreational highway, to be developed along the Mississippi River from Lake Itasca in Minnesota to near Venice, Louisiana, and the Gulf of Mexico.

(c) *Scenic and Recreational Highway*, a highway generally within a scenic corridor of parkway-like development having significant scenic, historical and recreational features.

§ 661.3 Route designation.

(a) A single route for the Great River Road shall be designated for Federal participation purposes. Except where significant breaks in continuity would result, it shall, to the extent feasible, follow existing road alignment. It shall cross the Mississippi River on existing bridges.

(b) The 10 Mississippi River States shall select, in cooperation with and subject to the approval of the Federal Highway Administration (FHWA), the specific location of the Great River Road system between designated existing Mississippi River crossings, which control points, along with other state-line crossings, shall be coordinated between adjoining States. Each State is responsible for the following segments:

State	Segments
Minnesota	Lake Itasca to Point Douglas.
Wisconsin	Prescott to South of DeSoto opposite Lansing, Iowa.
Iowa	Lansing to Dubuque and Muscatine to Ft. Madison.
Illinois	East Dubuque to Muscatine, Niota to Hannibal and Chester to Kentucky State line.
Missouri	Hannibal to St. Marys.
Kentucky	Illinois State line to Tennessee State line.
Tennessee	Kentucky State line to Memphis.
Arkansas	West Memphis to Shives.
Mississippi	Greenville to Louisiana State line.
Louisiana	Mississippi State line to the Gulf of Mexico crossing from the east bank to the west bank at Baton Rouge.

(c) The established Mississippi River crossings may be changed to other existing crossings and the Great River Road route modified accordingly when

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jointly agreed to by the States involved and approved by FHWA.

(d) Each State shall submit for FHWA approval the specific location of its segments of the Great River Road between designated control points. The FHWA will approve the location selected pursuant to the criteria set forth in this regulation. Access spurs may be included between the designated control points when access is not reasonably available over the existing Federal-aid highway network, to connect the Great River Road to significant scenic, historical, recreational or archeological features proximate to the Mississippi River or to existing bridges when these significant features are on the opposite side of the river.

(e) The States' selection and FHWA approval of a single scenic and recreation route location is provided for in this part for the purpose of establishing eligibility for the special category funds authorized under 23 U.S.C. 148. The States may continue to develop and sign the route on the alternative side of the river as the Great River Road Alternate which will not be eligible for Federal funds authorized under 23 U.S.C. 148.

(Sec. 125 of Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 148, 315; 49 CFR 1.48(b))

[41 FR 52449, Nov. 30, 1976, as amended at 44 FR 11542, Mar. 1, 1979]

§ 661.4 Location criteria.

In establishing the specific location of the Great River Road, the following criteria shall be adhered to:

(a) The road shall originate at the headwaters of the Mississippi River at Lake Itasca in Minnesota, extend generally parallel and in proximity to the river, and terminate near the Gulf of Mexico in the vicinity of Venice, Louisiana.

(b) The road shall be located to take advantage of scenic river views and provide the user opportunities to stop and enjoy unique features and recreational activities.

(c) The road shall provide for a variety of experiences or themes, such as scenery, nature, history, geology and land use for scientific or cultural purposes.

(d) The road shall include, or allow for subsequent development, conveniently spaced roadside rest areas and other facilities so that the user may view and otherwise take advantage of the scenic, recreational and cultural areas of interest along the route.

(e) The road shall be located so that the unique values of the corridor may be protected. This may be accomplished by appropriate route selection, effective control or elimination of development inconsistent with the nature and performance of the highway through zoning or other land use restrictions, the acquisition of scenic easements and where necessary the direct acquisition of scenic, historic, woodland or other areas of interest in fee or by other appropriate measures.

(f) The road shall be located so as to provide for convenient access to:

(1) Larger population centers of the States through which the Great River Road passes,

(2) Other elements of the Federal-aid system, particularly the Interstate System.

(3) Sites of historical, archeological, scientific, scenic, or cultural interest in the areas through which the route passes, and

(4) Local services such as gas, food, and lodging and recreational facilities to a degree not inconsistent with the purposes of the route.

§ 661.5 Project eligibility.

(a) Projects for expenditures of Great River Road funds shall be located on roads on the approved Great River Road location or on approved access spurs as described in 661.3(d). In addition, except for portions under Federal jurisdiction, the mainline Great River Road shall also be part of an appropriate Federal-aid system (23 U.S.C. 148(c)).

(b) Great River Road projects shall be implemented under normal Federal-aid project procedures unless otherwise provided herein or otherwise approved by the Administrator.

(c) Projects for utilization of Great River Road funds will be selected on the following basis, listed in order of declining priority, unless it is demonstrated to be impractical.

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(1) Preliminary engineering, including environmental studies for support of the selection of existing route segments including acquisition of scenic easements and other areas of interest.

(2) Acquisition of scenic easements and areas of scenic, historical, archeological, or scientific interest which are on existing route segments.

(3) Construction of rest areas, scenic overlooks, bicycle trails and reasonable access to areas of interest and scenic enhancement on existing route segments.

(4) Preliminary engineering through the location stage for segments on new location, including environmental studies.

(5) Reconstruction and rehabilitation of the existing route segments.

(6) Construction of new route segments to establish route continuity.

(d) Great River Road funds shall not be used to construct new Mississippi River crossing structures. Participation is limited to the same side of the river as the Great River Road.

(e) Where traffic service and highway safety warrants are more than adequate to support the use of other Federal-aid highway funds, the use of such funds should first be given serious consideration.

(f) No fees shall be charged for the use of any facility constructed with Great River Road funds except for parks, recreational areas, and historical sites operated by State or local governments where admission fees are charged to cover operational costs. The provisions of 23 U.S.C. 129(a) shall not apply to any bridge or tunnel on the Great River Road.

(g) The Federal share of the cost of Great River Road funded projects on portions of the approved route included on the Federal-aid system under the functional classification provisions of 23 U.S.C. 103 shall be as provided in 23 U.S.C. 120. The Federal share of the cost of projects not included on the Federal-aid system except to satisfy 23 U.S.C. 148(c) shall be 75 percent. The Federal share of the cost of projects on approved Great River Road facilities under Federal jurisdiction shall be 100 percent.

(Sec. 125 of Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 148, 315; 49 CFR 1.48(b))

[41 FR 52449, Nov. 30, 1976, as amended at 44 FR 11542, Mar. 2, 1979]

§ 661.6 Design and construction.

(a) Except as indicated below, the Great River Road shall be designed and constructed by each of the 10 Mississippi River States in accordance with FHWA regulations and directives applicable to the appropriate system.

(b) Roadway elements of the Great River Road which impact on the safety of traffic operations shall be designed using as a guide the standards, specifications, policies, and guides applicable to the design of Federal-aid projects. Great River Road funds may participate in preliminary engineering, right-of-way acquisition and physical construction, but participation in physical construction or reconstruction shall be limited to a roadway width of two 12-foot lanes plus shoulders and a pro rata share of ancillary elements which are consistent with parkway development if more than two lanes are to be constructed.

(c) The other design elements of the total facility should incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route. Such features may include rest areas and scenic overlooks with suitable facilities and bikeways and pedestrian walkways.

(d) Outdoor advertising signs, displays and devices shall be effectively controlled pursuant to 23 U.S.C. 131 irrespective of the Federal system designation.

(e) Pursuant to 23 U.S.C. 148(a)(3), the Great River Road shall be signed with uniform identifying trail markers.

PART 666—DEFENSE BRIDGES AND CRITICAL HIGHWAY FACILITIES REPORTS

Sec.

666.1 Purpose.
666.3 General.
666.5 Information needed.
666.7 Defense highway network.
666.9 Structures off the Federal-aid system.

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Sec.
666.11 Structures less than 20 feet in length.
666.13 Ferries.
666.15 Bridge index maps and mileage summary totals.
666.17 Method and frequency of reporting.

APPENDIX A TO PART 666—INSTRUCTIONS FOR PREPARING THE BRIDGE INDEX MAP
APPENDIX B TO PART 666—EXAMPLES OF PORTIONS OF BRIDGE INDEX MAP

AUTHORITY: 23 U.S.C. 210 and 315; 49 CFR 1.48(b); EO 11490, 34 FR 17567, 3 CFR 1966-1970 Comp.; EO 11921, 41 FR 24294.

SOURCE: 42 FR 49932, Sept. 28, 1977, unless otherwise noted.

§ 666.1 Purpose.

To prescribe the procedures to be followed in the furnishing of supplemental bridge data and other information required to generate defense bridge and critical highway facilities reports.

§ 666.3 General.

(a) In an effort to avoid duplication in reporting of bridge data by State highway departments and to relieve States of the responsibility for the generation, preparation, and distribution of a separate report concerning defense bridges and critical highway facilities, the FHWA has agreed to produce such reports biennially from the data base developed through the National Bridge Inspection Standards (NBIS) inventory[1] and certain other information and bridge data provided in accordance with this regulation.

(b) In complying with this regulation, State Highway departments are encouraged to update and utilize those Bridge Index Maps developed and furnished as a part of former Defense Bridge Record submissions.

§ 666.5 Information needed.

To fulfill the reporting requirements of the FHWA, there is a need for submission of current data and information from each State on:

(a) Routes included in the Defense Highway Network,

(b) Structures off the Federal-aid System, but on one of the defense highway sections,

(c) Structures less than 20 feet in length on a defense highway section, but with clearence or capacity limitations,

(d) Ferries, and

(e) Bridge Index Maps and mileage summary totals.

§ 666.7 Defense highway network.

(a) Each State highway department is to review its highway facilities and identify all routes that might reasonably be used for important defense shipments, movements of troops or military hardware and/or supplies, or for the evacuation of the general public from disaster areas. All routes identified for these purposes are to be incorporated into and will collectively form the Nation's Defense Highway Network. This network currently consists of about 250,000 miles of major highways.

(b) The defense highway network normally should include as a minimum the Interstate and the Federal-aid primary (FAP routes as realigned in accordance with the 1973 Federal-Aid Highway Act (Pub. L. 93-87, 87 Stat. 250). In special cases, however, the States may delete such routes that are considered unnecessary for national defense and for State emergency plans for natural disasters. While each State has the right to choose its own defense network, it should be prepared to explain why any routes are not included that normally would be under the criteria identified herein.

(c) The defense highway network should provide connecting routes to important military installations, industries, and resources not served by the FAP routes. This would include the following:

(1) Military buses, National Guard installations, supply depots, etc.;

(2) Hospitals, medical supply centers, emergency depots, etc,;

(3) Major Airports;

(4) Defense industries plus those that could easily or logically be converted to such;

(5) Refineries, fuel storage, and distribution centers;

(6) Major railroad terminals, railheads, docks, truck terminals;

[1] 23 CFR part 650, subpart C.

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(7) Major power plants, including hydroelectric centers at major dams;
(8) Major communications centers;
(9) Transporter-Erector Routes;
(10) Routes containing bridges and tunnels that have been identified as critical under the provisions of Federal-Aid Highway Program Manual volume 6, chapter 10, section 1, subsection 1,[2] "Protection of Critical Highway Facilities Against Sabotage"; and
(11) Other facilities that the State considers important from the standpoint of national defense or unforeseen emergencies.
(d) Following selection of the defense network, each State highway department is requested to illustrate it and number the highways in accordance with instructions provided in appendix A of this part, "Instructions for Preparing the Bridge Index Map."

§ 666.9 Structures off the Federal-aid system.

Information is needed for *all* structures on each State's defense highway network. The data desired are identical to the bridge data required by the NBIS program. Bridges on those roads/routes on each State's defense network but off the Federal-aid system are to be inspected using the same inventory, recording and coding procedures used for the NBIS program. Structures to be reported are all bridges both free and toll that meet the American Association of State Highway and Transportation Officials (AASHTO) definition of a bridge as given in AASHTO "Transportation Glossary." [3] Data on structures less than 20 feet in length should be included in accordance with guidance provided in § 666.11 of this part.

[42 FR 49932, Sept. 28, 1977, as amended at 51 FR 16834, May 7, 1986]

§ 666.11 Structures less than 20 feet in length.

It is a requirement that data on all structures less than 20 feet in length that have limitations in certain characteristics that may restrict defense movements be furnished for all routes (whether or not part of the Federal-aid system) on each State's defense highway network. The structures to be reported with critical limitations are those:
(a) Where the width on the structure is appreciably less (one fourth of approach roadway width) than the traveled way of the approach roadway.
(b) Where the minimum vertical clearance for a selected path on the structure (Item 10 "Inventory Route, Minimum Vertical Clearance," of the NBIS "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges" [4] is less than 18 feet, and
(c) Where the structure is considered to be incapable of carrying a load equivalent to H 10.

§ 666.13 Ferries.

Where the employment of ferries is necessary for route continuity on the Defense Highway Network, data concerning such ferries should be shown on the appropriate map near the location of the ferry. If that is not practical, the information may be shown in tabular form in an otherwise blank portion of the Bridge Index Map.

§ 666.15 Bridge index maps and mileage summary totals.

Bridge Index Maps are to be prepared in accordance with appendix A of this part. Mileage summary totals for defense routes selected for study should be classified and shown in some

[2] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR part 7, app. D.
[3] The booklet entitled "Transportation Glossary" is available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, DC 20001. A copy may be examined during normal business hours at the office of each State Highway Department/Agency, the FHWA Division office in each State, FHWA Region offices, and at FHWA Headquarters located at 400 7th Street SW., Washington, DC 20590. The addresses of those document inspection facilities are set forth in 49 CFR part 7, app. D. See also 23 CFR part 650, subpart C for *bridge* definition.

[4] Published by the U.S. Department of Transportation, Federal Highway Administration, July 1972, it is available for inspection and copying as prescribed in 49 CFR part 7, app. D.

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otherwise unused space of the Bridge Index Map by the systems listed below:

(a) Interstate traveled-way:
(1) Free,
(2) Toll,
(b) Other Federal-aid primary routes:
(1) On the State primary system,
(2) Off the state primary system,
(c) Other routes:
(1) On the State primary system,
(2) Off the State primary system,
(d) Total, all routes reported.

§ 666.17 Method and frequency of reporting.

(a) Data requested for all structures on the Defense Highway Network are to be incorporated into the NBIS data and reported simultaneously with the State's NBIS report beginning December 1977 (OMB Clearance No. 04-R2441). The NBIS data submissions shall be made every two years and more frequently upon request.

(b) To the extent possible, each State should also coordinate the time for its submission of Bridge Index Map(s), illustrating its defense highway network, data on ferries and mileage summary totals with each NBIS inventory. Bridge Index Maps with information on ferries and mileage summary totals are to be submitted every two years beginning in November 1977 through appropriate FHWA field offices to FHWA Headquarters, Attention: HHO-40.

(c) Coordination at State level will be necessary if an office different from one providing NBIS data is assigned responsibility for the information required herein.

(d) In the event metrication is mandated and changes are made to the NBIS inventory and the "Recording and Coding Guide for Structure Inventory and Appraisal of the Nation's Bridges," the metric system will be utilized and this publication revised in accordance with FHWA guidance.

Appendix A to Part 666—Instructions for Preparing the Bridge Index Map

1. A State map showing the routes and/or connecting roads to be included in the Defense Highway Network will be used to indicate the road sections on which the various structures are located. For uniformity in designation, this will be known as the Bridge Index Map. The State general highway map with enlarged scale insets or supplemental sheets for urban and other congested areas might serve the purpose in some cases; however, this may result in a congested map unless modified to clearly identify the routes selected for the study. It generally will be preferable to prepare a skeletonized map showing only the routes covered by the data, using single lines, county names with boundaries, important places, necessary ferries, and physical features. The map should be of a quality and type such that additional copies can be made from a single submission and should be complete for the purposes intended.

2. The Interstate System should be indicated on the map. The Interstate route number and the signed U.S. and State route numbers should be shown for purposes of road identification. The primary control for the bridge record, however, will be the section numbers. A defense highway section is defined by the intersection of that highway with each of the other roads that also have been selected as defense highways. These intersections may be either at grade or at an interchange. There are exceptions to this. However, per the instructions in the NBIS Recording and Coding Guide, a section cannot exceed 99.9 miles in length. Where two defense highways do not intersect within a 99.9 mile distance, the section must be divided into two or more sections by using as breakpoints intersections with other highways that are significant but that are not defense highways or by using other identifiable features such as rivers, county lines, etc. These features must be shown on the index map. A second exception is given in paragraph 5 of this appendix.

3. The numbering should start with the designated defense highway that begins in the most northwesterly part of the State and that is generally in a west to east direction. There may be situations where two or more different routes (routes with different numerical identifications) form a logical corridor west to east across the State. In these situations, the numbering should follow the corridor. The rule of thumb is that the key to the numbering is logical routing, not route numbers. In order to provide for expansion, that is, allow new sections to be added without causing all sections to be renumbered, the section numbers should be incremented by 5, with the first section numbered "5." The section numbers should continue in this incremental sequence along the length of the route to the east. Again, where several routes form a corridor across the State, the section

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numbers should be incremented along the entire length of the corridor, rather than just a single route. The next west-east route or corridor of routes south of the first one would be numbered, beginning with the next highest incremental number, continuing the sequence or order of numbers. This should continue until all west to east routes or corridors of routes are numbered. Then, beginning with the south to north route or corridors of routes that begin in the southwesterly part of the State and continuing with the next highest incremental section number, the route or corridor of routes is numbered with the numbers ascending in a northerly direction. The next south to north route or corridor to the east of the first one should be numbered next, beginning with the next highest incremental section number. No two sections of road in the State should be assigned the same number, nor should any section be assigned more than one number.

4. There will be some overlaps in any logical routing. When a route being numbered coincides for a distance with one previously numbered, the lower section numbers previously assigned will apply to the coincident sections. The higher numbering will be discontinued at the beginning of the overlap and continued again when the two routes separate. Thus, for example, the sections of a route being considered might be numbered: 325-335, 25-35, 340-355, the number 25-35 being on sections which are coincident with a part of a route previously numbered.

5. The section number ordinarily should be place beside the road section but, in congested areas, may be placed at some distance away with an arrow drawn to the road section to which it applies. These should be readily distinguishable from any other numbers on the map, such as State route numbers. It is important that all sections be clearly noted on the Bridge Index Map. This ordinarily will require the use of insets to show the detail that is necessary to facilitate full understanding of the report in the case of interchanges. Within interchanges, each ramp or turning roadway should be numbered as a separate section (although it will not be necessary to have a record or line in the report for ramps that do not have bridges that either carry the ramp or go over it), making every attempt to maintain continuity of numbering with respect to the mainline. This means that the ramps will be numbered according to the mainline routes from which they diverge, by adding a letter suffix, beginning with the first ramp encountered in the direction of inventory and then with each ramp in a counter-clockwise direction. An interchange numbered section 120, for example, may include several ramps with bridges either over or carrying the ramp. These ramps would become sections 120A, 120B, 120C, etc. The insets show, in addition to the section numbers, the direction of traffic movement. Examples of a portion of a Bridge Index Map and several insets are shown in appendix B of this part. Note that the examples show two alternate methods of section numbering. The first is to number the interchange area as a separate section. This is another exception to the criteria for establishing sections that was discussed in paragraph 2 of this appendix. The second alternative is to include the interchange area with either the preceding or succeeding sections, preferably the preceding one. Whichever is used should be used throughout the report to be consistent.

6. The road sections will be used to indicate between which road intersections each bridge is located. The Bridge Index Map need not show the location of each bridge.

7. Inconsistencies at statelines should be avoided. These fall into two categories:

(a) A highway which crosses a stateline is selected by one State for inclusion in the Bridge Record, but is not selected by the adjoining State.

(b) A structure located at a stateline is not reported by either State for inclusion in the Bridge Record, or is reported by both States but with differences. The differences may involve span length, vertical clearance, or other reported data.

8. Those in the first category should be resolved by means of an exchange of maps by highway departments in adjoining States, followed by addition or deletion of routes as may be most appropriate. For those in the second category, each State should report on those structures for which the highway department or other agency within that State has maintenance responsibility. For the unusual case not covered by this rule, an agreement should be reached between the two States involved as to which State should have reporting responsibilities.

9. Ferries necessary for through route continuity should be identified and shown at their location on skeletonized maps. Ferry carrying capacity and limiting clearances may be shown near the ferry location or tabulated and keyed to route and location.

10. Defense Highway Network mileage summary totals classified in accordance with guidance provided in § 666.15 are to be shown in some otherwise unused space of the Bridge Index Map.

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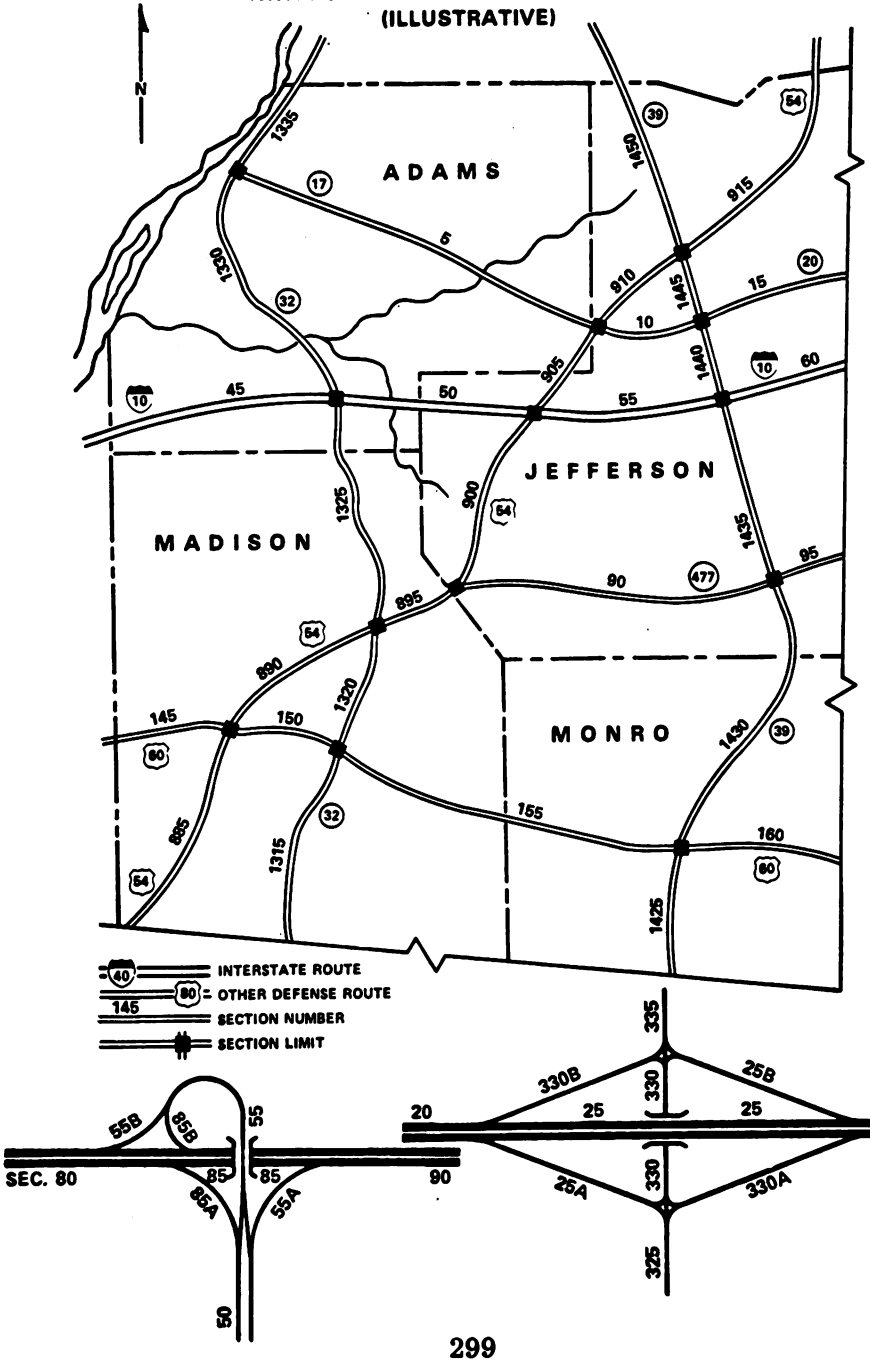
APPENDIX B
EXAMPLES OF PORTIONS OF BRIDGE INDEX MAP

N.W. PORTION OF BRIDGE INDEX MAP (ILLUSTRATIVE)



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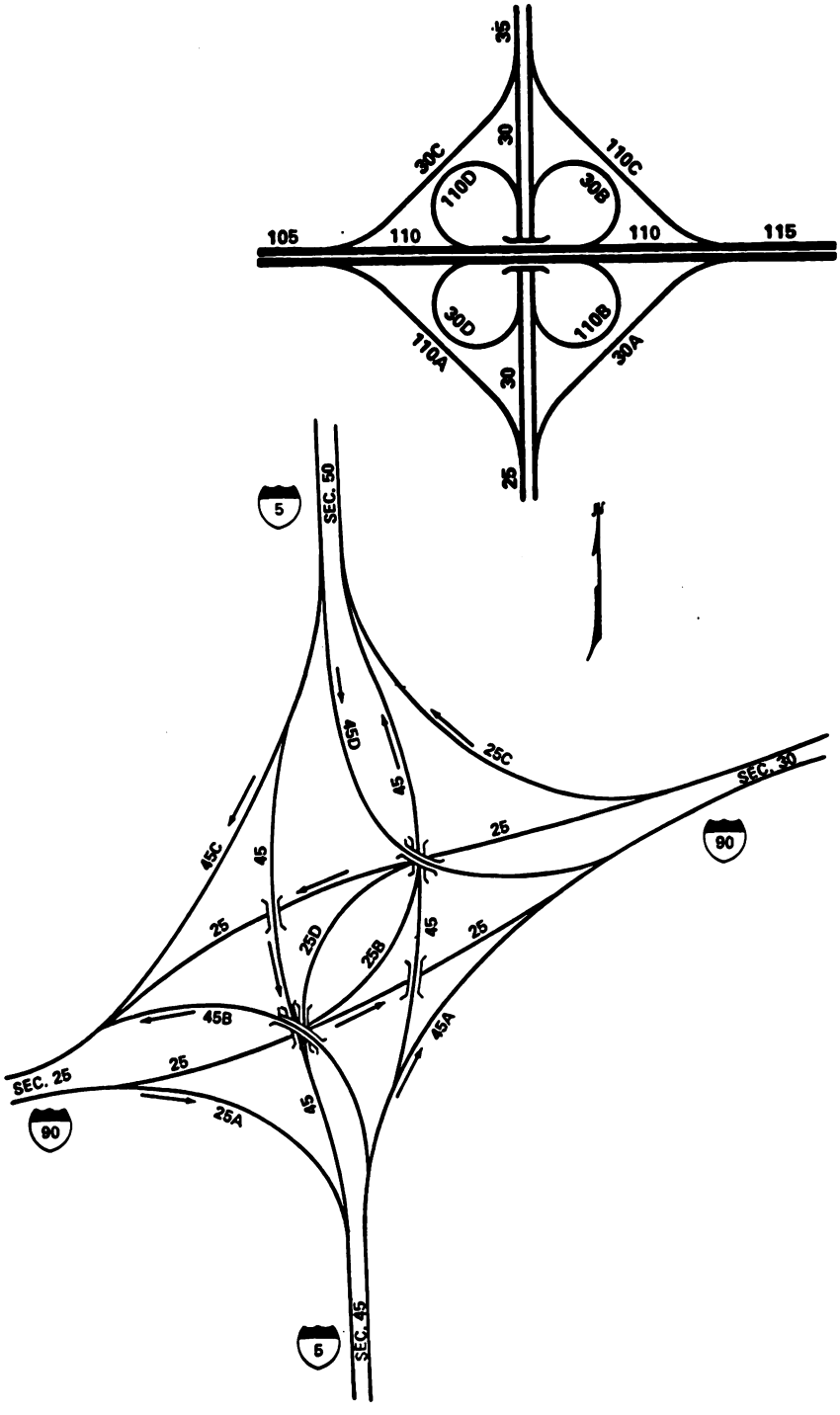

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PART 667—PUBLIC LANDS HIGHWAYS FUNDS

Sec.
667.1 Purpose.
667.3 Allocation of funds.
667.5 Project procedures.
667.7 Eligibility.

AUTHORITY: 23 U.S.C. 202(c), 204 and 315; and 49 CFR 1.48(b).

SOURCE: 50 FR 10756, Mar. 18, 1985, unless otherwise noted.

§ 667.1 Purpose.

The purpose of this regulation is to outline procedures to be followed in administering Public Lands Highways funds.

§ 667.3 Allocation of funds.

(a) Funds authorized for Public Lands Highways shall be allocated among the States on the basis of need as determined by the Federal Highway Administrator upon application of the State highway agency (SHA). Preference will be given to those projects which significantly benefit or improve Federal land and resource management and similar consideration will be given regardless of the type of Federal lands involved.

(b) Annually a call will be issued by the Federal Highway Administration (FHWA) to the respective SHA's for candidate projects. The SHA's may identify and prioritize candidate projects in consultation with FHWA and other Federal agencies as appropriate.

(c) All candidate projects submitted in response to the above call will be reviewed by FHWA Washington Headquarters and a priority of need determined on the basis of supporting information submitted with the application dealing with the following considerations:

(1) Relationship to Federal land and resource management plans and activities including traffic carrying capacity and other effects on land use and resource development,

(2) Current status and adequacy of the present road with regard to route continuity, capacity, safety and State and Federal agency transportation plans,

(3) Relationship of proposed improvement to the adequate development of a complete highway section, and

(4) Schedule for physical construction, particularly, how soon physical construction will begin.

(d) After reviewing the applications based on the above criteria, the FHWA will also give some consideration to the equitable distribution to States of available funds.

§ 667.5 Project procedures.

(a) Except as noted herein, work is to be administered by the SHA in accordance with Federal-aid procedures applicable to Federal-aid primary projects or by the FHWA in accordance with procedures applicable to forest highway projects. The method chosen will be determined by agreement between the SHA and the FHWA Division Administrator.

(b) The Administrator's approval of a specific project constitutes program approval. There is no need for subsequent inclusion in the statewide program of projects.

(c) Upon receipt of advice of project approval, the project should be advanced expeditiously. Projects shall be constructed through contracts awarded by competitive bidding unless the FHWA Division Administrator (or Direct Federal Division Engineer) finds that another method is cost effective for a particular project.

(d) The amount of Public Lands Highways funds available for the construction of a specific project is limited to the amount of funds allotted for that project. No fund transfers or changes to project termini or descriptions as approved by the Administrator will be permitted without prior approval from the Washington Headquarters.

§ 667.7 Eligibility.

(a) Funds authorized for Public Lands Highways are available for public roads on the Federal-aid system which are entirely within Federal lands.

(b) Funds may be used for engineering and construction of the mainline roadway including adjacent vehicular

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parking areas and construction elements related to scenic easements.

(c) Funds may not be used for right-of-way costs, maintenance or other ancillaries such as sanitary, water and fire control facilities.

PART 668—EMERGENCY RELIEF PROGRAM

Subpart A—Procedures for Federal-Aid Highways

Sec.
668.101 Purpose.
668.103 Definitions.
668.105 Policy.
668.107 Federal share payable.
668.109 Eligibility.
668.111 Application procedures.
668.113 Program and project procedures.

Subpart B—Procedures for Federal Agencies for Federal Roads

668.201 Purpose.
668.203 Definitions.
668.205 Policy.
668.207 Federal share payable from emergency fund.
668.209 Eligibility of work.
668.211 Notification, damage assessment, and finding.
668.213 Application procedures.
668.215 Programming and project procedures.

Subpart A—Procedures for Federal-Aid Highways

AUTHORITY: 23 U.S.C. 101, 120(f), 125 and 315; 42 U.S.C. 5155; 49 CFR 1.48(b).

SOURCE: 52 FR 21948, June 10, 1987, unless otherwise noted.

§ 668.101 Purpose.

To establish policy and provide program guidance for the administration of emergency funds for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural diasters over a wide area or serious damage from catastrophic failures. Guidance for application by Federal agencies for reconstruction of Federal roads not on the Federal-aid system is contained in 23 CFR part 668, subpart B.

§ 668.103 Definitions.

In addition to others contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

(a) *Applicant.* The State highway agency is the applicant for Federal assistance under 23 U.S.C. 125 for State highways and local roads and streets which are a part of the Federal-aid highway system.

(b) *Catastrophic failure.* The sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

(c) *Emergency repairs.* Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of:

(1) Minimizing the extent of the damage,

(2) Protecting remaining facilities, or

(3) Restoring essential travel.

(d) *External cause.* An outside force or phenomenon which is separate from the damaged element and not primarily the result of existing conditions.

(e) *Heavy maintenance.* Work usually done by highway agencies in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences. It includes work at a site required as a direct result of a disaster which can reasonably be accommodated by a State or local road authority's maintenance, emergency or contingency program.

(f) *Natural disaster.* A sudden and unusual natural occurrence, including but not limited to intense rainfall, floods, hurricanes, tornadoes, tidal waves, landslides, volcanoes or earthquakes which cause serious damage.

(g) *Proclamation.* A declaration of emergency by the Governor of the affected State.

(h) *Serious damage.* Heavy, major or unusual damage to a highway which severely impairs the safety or usefulness of the highway or results in road

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closure. Serious damage must be beyond the scope of heavy maintenance.

(i) *State.* Any one of the United States, the District of Columbia, Puerto Rico or the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands.

§ 668.105 Policy.

(a) The Emergency Relief (ER) program is intended to aid States in repairing road facilities which have suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure.

(b) ER funds are not intended to supplant other funds for correction of preexisting, nondisaster related deficiencies.

(c) The expenditure of ER funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work.

(d) The approval to use available ER funds to repair or restore highways damaged by a natural disaster shall be based on the combination of the extraordinary character of the natural disturbance and the wide area of impact as well as the seriousness of the damage. Storms of unusual intensity occurring over a small area may not meet the above conditions.

(e) ER funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds including interest recovered by the State or political subdivision must be used upon receipt to reduce ER fund liability on the project.

(f) Prompt and diligent efforts shall be made by the State to recover repair costs from the legally responsible parties to reduce the project costs particularly where catastrophic damages are caused by ships, barge tows, highway vehicles, or vehicles with illegal loads or where damage is increased by improperly controlled objects or events.

(g) The processing of ER requests shall be given prompt attention and shall be given priority over non-emergency work.

(h) ER projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occurrence will not be advanced unless suitable justification to warrant retention is furnished to the FHWA.

(i) Permanent repair and reconstruction work, not accomplished as emergency repairs, shall be done by the contract method unless the State Highway agency adequately demonstrates that some other method is more cost effective as described in 23 CFR 635.204. Emergency repair work may be accomplished by the contract, negotiated contract or highway agency force account methods as determined by the Highway agency as best suited to protect the public health and safety.

(j) ER program funding is only to be used to repair highways which have been seriously damaged and is not intended to fund heavy maintenance or routine emergency repair activities which should normally be funded as contingency items in the State and local road programs. An application for ER funds in the range of $500,000 or less must be accompanied by a showing as to why the damage repair involved is considered to be beyond the scope of heavy maintenance or routine emergency repair. As a general rule, widespread nominal road damages in this range would not be considered to be of a significant nature justifying approval by the FHWA Administrator for ER funding.

§ 668.107 Federal share payable.

(a) The Federal share payable on account of any repair or reconstruction provided for by funds made available under 23 U.S.C. 125 of this title on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in 23 U.S.C.

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120; except that the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 90 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof.

(b) Total obligations of ER funds in any State, excluding the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands, for all projects (including projects on both the Federal-aid systems and those on Federal roads under 23 CFR part 668, subpart B), resulting from a single natural disaster or a single catastrophic failure, shall not exceed $100 million per disaster or catastrophic failure. The total obligations for ER projects in any fiscal year in the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall not exceed $5 million. Upon receipt of the field reports and estimates, allocations of available funds will be made by FHWA Headquarters in Washington, DC.

[52 FR 21948, June 10, 1987, as amended at 52 FR 32540, Aug. 28, 1987]

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the Federal Highway Administrator of an application for ER and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) ER funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements as necessary to restore the facility to predisaster conditions, including necessary clearance of debris and other deposits in drainage courses within the right-of way (ROW);

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and

(ii) The work is necessary for satisfactory operation of the highway system involved;

(3) Actural PE and construction engineering costs on approved projects;

(4) Emergency repairs;

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster; and

(6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair.

(c) ER funds may not participate in:

(1) Heavy maintenance to repair damage not directly associated with serious damage to the road consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits, slope sloughing, minor slides, and slip-outs in cut or fill slopes which do not extend to the travelled way. In order to simplify the inspection and estimating process, heavy maintenance may be defined using dollar guidelines developed by the States and Divisions with Regional concurrence.

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, unless such traffic was necessary for emergency repairs of seriously damaged sections of the road;

(3) Repair of damage not directly related to, and isolated away from, the pattern of the disaster;

(4) Maintenance of detours and temporary surfaces, upon completion of emergency repairs and prior to permanent reconstruction;

(5) Replacement of damaged or lost material not incorporated into the highway such as stockpiled materials or items awaiting installation;

(6) Repair or reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing

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situations such as flooding in basin areas or slow moving slides;

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other funds. *Scheduled* means included in the approved Federal-aid program, the current or next fiscal year's Highway Bridge Replacement and Rehabilitation Program or included in contract plans being prepared; and

(8) Other normal maintenance and operation functions on the highway system.

(d) Replacement highway facilities are appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and are limited in ER reimbursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

(e) Except as otherwise provided in paragraph (b)(6) of this section, the total cost of a project eligible for ER funding may not exceed the cost of repair or reconstruction of a comparable facility. ER funds may participate to the extent of eligible repair costs when proposed projects contain unjustified betterments or other work not eligible for ER funds.

§ 668.111 Application procedures.

(a) *Notification.* As soon as possible after the disaster, the applicant shall notify the FHWA Division Administrator of its intent to apply for ER funds.

(b) *Field report.* As soon as practical after the occurrence, the State will promptly make a preliminary field survey, working cooperatively with the FHWA Division Administrator and other governmental agencies with jurisdiction over eligible highways. The preliminary field survey should be coordinated with the Federal Emergency Management Agency work, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible highways for preparation of a field report by the FHWA Division Administrator.

(1) The purpose of the field report is to provide a factual basis for the Federal Highway Administrator's finding that serious damage to Federal-aid highways has been caused by a natural disaster over a wide area or a catastrophe. The report should include by political subdivision or other generally recognized administrative or geographic boundaries, a description of the types and extent of damage to highways and a preliminary estimate of cost of restoration or reconstruction for Federal-aid systems in each jurisdiction. To the extent available, similar information on other roads should be included. A description of the nature and characteristics of the natural disaster or catastrophe, and dates of occurrence (incident period), should be coordinated with the Federal Emergency Management Agency (FEMA) and included in the report. When the President has declared "a major disaster," detailed information on the extraordinary natural disturbance is not required; however, the seriousness of the road damage must be documented. Pictures showing the kinds and extent of damage and sketch maps detailing the damage areas should be included in the field report.

(2) Unless very unusual circumstances prevail, receipt of the field report should be prepared within 6 weeks following the applicant's notification.

(c) *Application.* Before funds can be made available, an application for ER must be made to, and approved by the FHWA Administrator. The application shall be submitted to the FHWA Division Administrator, who will forward it through channels to FHWA Headquarters. The application shall include:

(1) A copy of the Governor's proclamation or request for a Presidential proclamation; and

(2) A copy of the field report.

(d) *Approval of application.* The Federal Highway Administrator's approval of the application constitutes the finding of eligibility under 23 U.S.C. 125 and shall constitute approval of the application.

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(Approved by the Office of Management and Budget under control number 2125-0525)

§ 668.113 Program and project procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program consistent with requirements of 23 CFR part 630. The program should define the work needed to restore or replace the damaged facilities and be submitted to the FHWA Division Administrator within 3 months of receipt of this notification. The FHWA field office will assist the applicant and other affected agencies in preparation of the program. This work may involve joint site inspections to view damage and reach tentative agreement on type of permanent corrective work to be undertaken. Program data should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility and propriety of proposed work. If the field report is determined by the FHWA Division Administrator to be of sufficient detail to meet these criteria, additional program support data need not be submitted.

(b) *Project procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures except as modified herein or with approved Certification Acceptance procedures where applicable.

(2) Simplified procedures, including abbreviated plans should be used where appropriate.

Subpart B—Procedures for Federal Agencies for Federal Roads

AUTHORITY: 23 U.S.C. 120(f), 125, and 315; 41 U.S.C. 252; 42 U.S.C. 5155; 49 CFR 1.48(b).

§ 668.201 Purpose.

To establish policy, procedures, and program guidance for the administration of emergency relief to Federal agencies for the repair or reconstruction of Federal roads which are found to have suffered serious damage by a natural disaster over a wide area or by catastrophic failure.

[43 FR 59485, Dec. 21, 1978]

§ 668.203 Definitions.

(a) *Applicant.* Any Federal agency which submits an application for emergency relief and which has authority to repair or reconstruct Federal roads.

(b) *Betterments.* Added protective features, such as, the relocation or rebuilding of roadways at a higher elevation or the extension, replacement or raising of bridges, and added facilities not existing prior to the natural disaster or catastrophic failure such as additional lanes, upgraded surfacing, or structures.

(c) *Catastrophic failure.* The sudden failure of a major element or segment of a Federal road which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

(d) *Emergency repairs.* Those repairs, including necessary preliminary engineering (PE), construction engineering (CE), and temporary traffic operations, undertaken during or immediately after a natural disaster or catastrophic failure (1) to restore essential travel, (2) to protect remaining facilities, or (3) to minimize the extent of damage.

(e) *Federal roads.* Forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads as defined under 23 U.S.C. 101(a).

(f) *Finding.* A letter or other official correspondence issued by the Direct Federal Division Engineer (DFDE) to a Federal agency giving notification that pursuant to 23 U.S.C. 125, Federal roads have (Affirmative Finding) or have not (Negative Finding) been found to have suffered serious damage as the result of (1) a natural disaster over a wide area, or (2) a catastrophic failure.

(g) *Natural disaster.* An unusual natural occurrence such as a flood, hurricane, severe storm, tidal wave, earth-

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quake, or landslide which causes serious damage.

(h) *Permanent work.* Repair or reconstruction to pre-disaster or other allowed geometric and construction standards and related PE and CE.

(i) *Direct Federal Division Engineer.* Director of one of the Direct Federal field offices located in Vancouver, WA; Denver, CO; and Arlington, VA.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

§ 668.205 Policy.

(a) This emergency relief program is intended to pay the unusually heavy expenses in the repair and reconstruction of Federal roads resulting from damage caused by natural disasters over a wide area or catastrophic failures.

(b) Emergency relief work shall be given prompt attention and priority over non-emergency work.

(c) Permanent work shall be done by contract awarded by competitive bidding through formal advertising, where feasible.

(d) It is in the public interest to perform emergency repairs immediately and prior approval or authorization from the DFDE is not required. Emergency repairs may be performed by the method of contracting (advertised contract, negotiated contract, or force account) which the applicant or the Federal Highway Administration (FHWA) (where FHWA performs the work) determines to be most suited for this work.

(e) Emergency relief projects shall be promptly constructed. Projects not under construction by the end of the second fiscal year following the year in which the disaster occurred will be reevaluated by the DFDE and will be withdrawn from the approved program of projects unless suitable justification is provided by the applicant to warrant retention.

(f) The Finding for natural disasters will be based on both the extraordinary character of the natural disturbance and the wide area of impact. Storms of unusual intensity occurring over a small area do not meet these conditions.

(g) Diligent efforts shall be made to recover repair costs from the legally responsible parties to reduce the project costs where highway damages are caused by ships, barge tows, highway vehicles, vehicles with illegal loads, and similar improperly controlled objects or events.

(h) Emergency funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Where other funding compensates for only part of an eligible cost, emergency relief funding can be used to pay the remaining costs.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

§ 668.207 Federal share payable from emergency fund.

The Federal share payable under this program is 100 percent of the cost.

[43 FR 59485, Dec. 21, 1978]

§ 668.209 Eligibility of work.

(a) Permanent work must have prior program approval in accordance with paragraph (a) of § 668.215 unless such work is performed as emergency repairs.

(b) Emergency repairs, including permanent work performed incidental to emergency repairs, and all PE may begin immediately and do not need prior program approval. Reimbursement shall be contingent upon the work ultimately being approved in accordance with the requirements of paragraph (a) of § 668.215.

(c) To qualify for emergency relief, the damaged or destroyed road or trail shall be designated as a Federal road.

(d) Replacement highway facilities are appropriate when it is not practical and economically feasible to repair or restore a damaged element to its preexisting condition. Emergency relief is limited to the cost of a new facility constructed to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

(e) Emergency relief funds may participate to the extent of eligible repair

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costs when proposed projects contain betterments or other work not eligible for emergency funds.

(f) Work may include:

(1) Repair to, or reconstruction of, seriously damaged highway elements for a distance which would be within normal highway right-of-way limits, including necessary clearance of debris and other deposits in drainage courses, where such work would not be classed as heavy maintenance.

(2) Restoration of stream channels when the work is necessary for the satisfactory operation of the federal road. The applicant must have responsibility and authority for maintenance and proper operation of stream channels restored.

(3) Betterments where clearly economically justified to prevent future recurring damage. Economic justification acceptable to the DFDE must weigh the cost of such betterments against the risk of eligible recurring damage and the cost of future repair.

(4) Actual PE and CE costs on approved projects.

(5) Emergency repairs.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

§ 668.211 Notification, damage assessment, and finding.

(a) *Notification.* During or as soon as possible after a natural disaster or catastrophic failure, each applicant will notify the DFDE of its tentative intent to apply for emergency relief and request that a Finding be made.

(b) *Acknowledgment.* The DFDE will promptly acknowledge the notification and briefly describe subsequent damage assessment, Finding, and application procedures.

(c) *Field report.* The applicant shall cooperate with the DFDE to promptly make a field survey of overall damage and in the preparation of a field report.

(d) *Finding.* Using the field report and other information deemed appropriate, the DFDE will promptly issue a Finding and if an Affirmative Finding is made, establish the date after which repair or reconstruction will be considered for emergency relief, and note the dates of the extraordinary natural occurrence or catastrophic event responsible for the damage or destruction.

(e) *Detailed site inspections.* (1) If an Affirmative Finding is made, the applicant shall cooperate with the DFDE to make a detailed inspection of each damage site.

(2) If it appears certain an Affirmative Finding will be made, the DFDE may elect to make these site inspections at the time damage is initially assessed pursuant to paragraph (c) of this section.

(f) The applicant shall make available to FHWA personnel conducting damage survey and estimate work maps depicting designated Federal roads in the affected area.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

§ 668.213 Application procedures.

(a) Based on the detailed site inspections and damage estimates prepared pursuant to paragraph (e) of § 668.211, the applicant will submit an application in the form of a letter to the DFDE which shall include a list of projects for which emergency relief is requested. The application shall be submitted within 3 months after an Affirmative Finding.

(b) The list of projects shall include emergency repairs, PE, and permanent work, and provide for each project a location, length, project number, type of damage, description of work with a separate breakdown for betterments including a justification for those intended for emergency relief funding, proposed method of construction, estimated cost, and any other information requested by the DFDE.

(c) If the initial list of projects is incomplete, a subsequent list(s) of projects shall be forwarded to the DFDE for approval consideration as soon as possible.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

§ 668.215 Programming and project procedures.

(a) The DFDE will advise the applicant in writing which projects in the application, or in any subsequent submittals pursuant to paragraph (c) of § 668.213 are approved including any

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approval conditions. Approved projects shall constitute the approved program of projects (program).

(b) Plans, specifications, and estimates (PS&E) shall be developed based on work identified in the approved program.

(c) The DFDE will approve PS&E's, concur in the award of contracts or the rejection of bids, determine that construction by the force account method is in the public interest, and accept completed work in accordance with interagency procedures established by the DFDE.

(d) The applicant shall notify the DFDE in writing of the semi-annual status and completion of each emergency relief project constructed by applicant forces.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

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AUTHORITY: 23 U.S.C. 141(d) and 315; 49 CFR 1.48(b).

SOURCE: 51 FR 25364, July 14, 1986, unless otherwise noted.

§ 669.1 Scope and purpose.

To prescribe requirements for certification by the states that evidence of proof of payment is obtained either before vehicles subject to the Federal heavy vehicle use tax are lawfully registered or within 4 months after being lawfully registered if a suspension registration system is implemented.

§ 669.3 Policy.

It is the policy of the FHWA that each state require registrants of heavy trucks as described in 26 CFR part 41 to provide proof of payment of the vehicle use tax either before lawfully registering or within 4 months after lawfully registering such vehicles as provided for under a suspension registration system.

§ 669.5 Objective.

The objective of this regulation is to establish realistic and workable procedures for an annual certification process to provide suitable evidence that an effective program is being conducted by the states and to ensure that the states are not registering vehicles which have not been accounted for under the tax collection procedures instituted by the Internal Revenue Service (IRS).

§ 669.7 Certification requirement.

The Governor of each state, or his or her designee, shall certify to the FHWA before July 1 of each year that it is obtaining proof of payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(d). The certification shall cover the 12-month period (8 months for the initial certification period) ending May 31.

§ 669.9 Certification content.

The certification shall consist of the following elements:

(a) A statement by the Governor of the state or a state official designated by the Governor, that evidence of payment of the heavy vehicle use tax is being obtained as a condition of registration for all vehicles subject to such tax. The statement shall include the inclusive dates of the period during which payment of the heavy vehicle use tax was verified as a condition of registration.

(b) The certifying statement required by paragraph (a) of this section shall be worded as follows:

I (name of certifying official), (position, title), of the State of ( ), do hereby certify that evidence of payment of the heavy vehicle use tax pursuant to section 4481 of the Internal Revenue Code of 1954, as amended, is being obtained as a condition of registration for vehicles subject to such tax in accordance with 23 U.S.C. 141(d) and ap-

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plicable IRS rules. This certification is for the period ( ) to ( ).

(c) For the initial certification, submit a copy of any state law or regulation pertaining to the implementation of 23 U.S.C. 141(d); for subsequent certifications, submit a copy of any new or revised laws and regulations pertaining to the implementation of 23 U.S.C. 141(d).

§ 669.11 Certification submittal.

The Governor or an official designated by the Governor, shall each year submit the certification, including the supporting material specified in § 669.9 to the FHWA Division Administrator prior to July 1.

§ 669.13 Effect of failure to certify or to adequately obtain proof of payment.

Beginning July 1, 1986, if a state fails to certify as required by this regulation or if the Secretary of Transportation determines that a state is not adequately obtaining proof of payment of the heavy vehicle use tax as a condition of registration notwithstanding the state's certification, Federal-aid highway funds apportioned to the state under 23 U.S.C. 104(b)(5) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

§ 669.15 Procedure for the reduction of funds.

(a) If it appears to the Federal Highway Administrator that a state has not submitted a certification conforming to the requirements of this regulation or that the state is not adequately obtaining proof of payment of the heavy vehicle use tax under 23 U.S.C. 141(d), the Federal Highway Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the state of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the state that it may, within 30 days from the date of the notice, request a conference to show cause why it should not be found in nonconformity.

(b) The conference will be informal in nature and conducted by the Administrator, or his/her designee. In all instances where the state proceeds on this basis, a transcript will be made and furnished to the state by FHWA. The state may offer any information which it considers helpful to a resolution of the matter, and the scope of review at the conference shall include, but not be limited to, state legislative actions (including those proposed to remedy deficiencies), budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the state into compliance.

(c) The state has the option to request such a conference, or it may submit such information in writing to the Administrator, who will make a determination on the basis of such materials and other available information.

§ 669.17 Compliance finding.

(a) If, following the conference or review of submitted materials described in § 669.15, the Administrator concludes that the state is in compliance, the Administrator shall issue a decision which is the final decision, and the matter shall be concluded.

(b) If, following the conference or review of information submitted under § 669.15, the Administrator, with the concurrence of the Secretary, concludes that the state is in noncompliance, the Administrator shall issue a decision, which is the final decision, and the matter be concluded. The decision will be served on the Governor, or his/her designee.

§ 669.19 Reservation and reapportionment of funds.

(a) The Administrator may reserve from obligation up to 25 percent of a state's apportionment of funds under 23 U.S.C. 104(b)(5), pending a final determination.

(b) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible states pursuant to the formulas of 23 U.S.C. 104(b)(5) and the apportionment factors in effect at the time of the original apportionments, unless the Secretary determines, on the basis of information submitted by the state, that

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the state has come into conformity with this regulation prior to the final determination. If the Secretary determines that the state has come into conformity, the withheld funds shall be released to the state subject to the availability of such funds under 23 U.S.C. 118(b).

(c) The reapportionment of funds under paragraph (b) of this section shall be stayed during the pendency of any judicial review of the Secretary's final determination of nonconformity.

§ 669.21 Procedure for evaluating state compliance.

The FHWA shall periodically review the state's procedures for complying with 23 U.S.C. 141(d), including an inspection of supporting documentation and records. The state shall retain a copy of the receipted IRS Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR part 41, § 41.6001-2, for a period of 1 year for purposes of evaluating state compliance with 23 U.S.C. 141(d) by the FHWA. In lieu of retention of Schedule 1, states may make an appropriate entry in an automated file or on registration documents retained by the state or retain a microfilm or microfiche copy of Schedule 1 or of the automated file as evidence that proof of payment has been received before vehicles subject to the Federal heavy vehicle use tax are registered.

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SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 710—RIGHT-OF-WAY—GENERAL

Subpart A—[Reserved]

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710.405 Regulations.

AUTHORITY: 23 U.S.C. 101(a) and 315; 42 U.S.C. 2000d *et seq.;* 49 CFR 1.48(b) and parts 21 and 24; 23 CFR 1.4 and 1.32.

SOURCE: 39 FR 26416, July 19, 1974, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—State Highway Department Responsibilities

§ 710.201 Purpose.

(a) To prescribe the general responsibility of a State highway department (SHD) relative to acquisition of rights-of-way for the Federal-aid highway systems.

(b) [Reserved]

(c) To prescribe the requirements for the preparation of an operational right-of-way manual by each SHD.

[39 FR 26416, July 19, 1974, as amended at 50 FR 34092, Aug. 23, 1985]

§ 710.202 Applicability.

The provisions of this subpart are applicable to all States which receive Federal financial assistance in connection with the Federal-aid highway program.

§ 710.203 General responsibilities.

(a) *Acquisition.* The SHD has overall responsibility for the acquisition of right-of-way on all Federal-aid highway systems.

(b) *Right-of-way organization.* Each SHD shall have a right-of-way organization adequately staffed, equipped, and organized to discharge its right-of-way responsibilities.

(c) *Use of other public right-of-way organizations.* The SHD may, by means of a written agreement, use the services of land acquisition organizations of counties, municipalities, or other State or local governmental agencies for acquiring rights-of-way for Federal-aid projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services and if its practices and procedures are in substantial conformity with the SHD's accepted procedures or it will follow the SHD's accepted procedures. It is the responsibility of the SHD to fully inform political subdivisions of their responsibilities in connection with federally assisted highway projects. The SHD shall monitor real property acquisition activities conducted by political subdivisions to ascertain that right-of-way is acquired in accordance with provisions of State and Federal laws and as required by Federal Highway Administration (FHWA) directives.

(d) *Adequacy of right-of-way.* The interest acquired in all rights-of-way for Federal-aid highways shall be adequate for the construction, operation, and maintenance of the highway and for the protection of both the transportation facilities and the traveling public.

(e) *Staff and fee negotiators.* (1) Negotiations shall be conducted by qualified staff employees of the State highway department (SHD) or political subdivision of a State, except as provided in paragraph (a)(3) of this section.

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(2) The SHD shall establish qualification standards for staff negotiators.

(3) In exceptional cases only, and upon prior approval of FHWA on a project basis, firms and individuals meeting the SHD's qualification standards may be employed by contract for negotiating purposes where the acquiring agency's workload significantly exceeds its normal workload.

(i) The employment of fee negotiators shall be by written contract.

(ii) The amount of the fee should be established on a parcel basis, and shall not be determined as a percentage of fair market value. The fee shall represent a fair payment for the work performed.

(4) The negotiator shall maintain timely adequate records of negotiation on a parcel basis. The record shall be written in permanent form and completed within a reasonable time after each contact with the property owner. The report shall be signed and dated by the assigned negotiator.

(f) *Additional requirements.* Additional requirements governing federally assisted real property acquisition, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR part 24, subpart B.

[39 FR 26416, July 19, 1974, as amended at 50 FR 34092, Aug. 23, 1985; 54 FR 47075, Nov. 9, 1989]

§ 710.204 [Reserved]

§ 710.205 Right-of-way manuals.

(a) Each SHD shall submit in duplicate to FHWA for acceptance a manual which clearly describes the SHD's right-of-way organization and the policies, procedures, and practices it will follow where right-of-way is acquired for Federal-aid highway projects.

(b) In general, the manual should be developed for the SHD's internal use and be designed to assist SHD right-of-way personnel in complying with both State and Federal laws, regulations, directives and standards. The manual must be in sufficient detail to adequately describe particular functions, and the operational procedures through which those functions will be accomplished. It should be in sufficient depth to guide the operating right-of-way employee in how he is to perform his assigned duties. All phases of the acquisition program shall be covered.

(c) The SHD may use a format that meets its own needs.

(d) Until the SHD's manual is accepted under the provisions of this subpart, previously accepted policy and procedure statements currently applicable will remain in effect.

(e) The SHD is responsible for full compliance with FHWA requirements whether or not its manual currently reflects proper coverage of the requirements. Changes to a manual, because of new FHWA requirements or changes in State law, etc., shall be submitted to FHWA for acceptance within a reasonable period of time. FHWA approval of manual changes is not required prior to implementation by the SHD. In-house administrative type manual changes should be transmitted to FHWA for informational purposes.

Subpart C—Reimbursement Provisions

§ 710.301 Purpose.

To set forth provisions governing reimbursement to a State highway department (SHD) for right-of-way costs incurred in connection with a Federal or Federal-aid highway project.

§ 710.302 Applicability.

The provisions of this subpart are applicable to all State claims for Federal-aid right-of-way reimbursement.

§ 710.303 Reimbursement requirements and limitations.

Participation in right-of-way costs incurred by the SHD for highway or highway related projects shall be under the circumstances and to the extent set forth below:

(a) When there has been approval of a program and the SHD has been authorized to proceed with right-of-way activities and, after the effective date of the authorization, the SHD legally obligates itself under State law to pay right-of-way costs.

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(b) When costs are incurred in conformity with State law and Federal Highway Administration (FHWA) directives.

(c) When costs are recognized and recorded as an obligation in the accounts of the SHD.

(d) Federal-aid participation may not exceed the statutory limitation for the particular Federal-aid funds used.

(e) On projects financed under 23 U.S.C. 120(d) for the elimination of hazards of railway-highway crossings, participation in the right-of-way cost may not exceed 70 percent, with no increase in public land States.

(f) On public land highways and on defense access roads as defined in title 23 U.S.C. 101a and 210, the extent of Federal participation will be in accordance with specific agreements between FHWA and the SHD.

(g) Reimbursement of costs shall be made only after the project agreement has been executed.

§ 710.304 Reimbursement policy.

(a) *Real property acquisition.* Federal funds may participate in payments made by the SHD for real property or interests therein acquired in accordance with applicable State and Federal law and FHWA directives. Unless otherwise provided, Federal funds may not participate in the costs of real property not incorporated into the final highway right-of-way.

(b) *Incidental expenses.* (1) Federal funds may participate in any expenditure of a type normal to the operation of the SHD and incidental to the acquisition of rights-of-way, whether the acquisition is by negotiation or condemnation.

(2) Federal participation will not be allowed in charges for the administrative and overhead expenses of either the headquarters or field offices of the SHD or other publicly maintained land acquisition organizations. When a supervisory or administrative employee is engaged in work chargeable to a specific project, Federal participation may be allowed in claims for salary and related expenses on that project in accordance with part 140, subpart G of this chapter.

(3) Federal funds may participate in the usual costs and disbursements chargeable to a condemning authority under State law as part of a valid bill of costs approved by a court in a condemnation proceeding. However, whether or not the costs are included in court judgments or awarded as court costs in litigated cases, Federal participation will not be permitted in the cost of a property owner's attorney fees, appraiser fees, expert witness fees, or similar costs which are paid by the SHD in connection with acquisition of rights-of-way, with the following exceptions:

(i) Where the final judgment is that the property cannot be acquired by condemnation, or

(ii) The proceeding is abandoned by the acquiring agency, or

(iii) An inverse condemnation proceeding is successfully maintained.

In any of the foregoing exceptions, participation will be limited to such sum as will in the opinion of the court or the head of the agency on whose behalf the proceeding was instituted, reimburse the owner for reasonable costs, disbursements, and expenses he actually incurred, including reasonable attorney, appraisal, and engineering fees.

(4) Federal funds may participate in payments by the SHD to a property owner for the following costs necessarily incurred in transferring property to the State:

(i) Recording fees, transfer taxes, and similar expenses incidental to conveying real property.

(ii) Penalty costs for prepayment of preexisting recorded mortgage entered into in good faith.

(iii) The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the SHD or effective date of possession by the SHD, whichever is earlier.

(5) *Technical guidance and training costs.* Where State employees are directly engaged in project activities or provide technical guidance, consultation, training, or otherwise work directly on specific projects with employees of a political subdivision to accomplish real property acquisition or in escalating such project operations to an acceptable level of performance,

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Federal funds may participate in the costs of such project activity.

(c) *Taxes.* Federal participation will not be permitted in the payment of special assessments or in the payment of taxes, except as provided in paragraphs (b)(4) and (d)(1) of this section.

(d) *Property management.* (1) Federal funds may participate in the net cost incurred by the SHD in the leasing, rental, maintenance, disposal of improvements, protection, rodent control, and clearance of real property acquired for right-of-way purposes. Taxes or payments in lieu of taxes required to be paid by a SHD are a legitimate property management expense and may be deducted from the gross rentals received.

(2) Federal funds may not participate in property management or demolition costs on excess lands acquired by the SHD when Federal participation in the costs of the related right-of-way acquisition is based on the provisions of paragraph (m)(1) of this section.

(3) Federal funds may participate in the net costs incurred by the SHD in the leasing, rental, maintenance, rodent control, protection and sale of excess lands when Federal participation in the cost of the related right-of-way acquisition is in accordance with paragraph (m)(2) of this section. In such instances, Federal funds may participate in the disposal or removal of improvements only when required by law or when such action will clearly enhance the value of the excess.

(4) Where right-of-way is acquired for future construction, the SHD may desire to close out the project before the net amount of rentals or salvage has been established. In such event, Federal participation may be established on the basis of the present worth of the estimated future net rentals and salvage.

(e) *Access rights.* (1) Where full or partial control of access is obtained on an existing highway, Federal funds may participate in the cost of access rights, whether or not other real property interest is acquired, providing the payments for the loss or impairment of access is based upon elements of damage generally compensable in eminent domain. Participation in these costs is not contingent upon further construction of the highway facility.

(2) Federal funds may not participate in payments for access rights where the controlled access highway is on a new location.

(f) *Material sites.* Subject to the provisions of part 635, subpart A of this chapter, Federal funds may participate as either a right-of-way or construction item in the costs of acquiring land or interests therein outside the normal right-of-way for the purpose of obtaining road building material to be made available to the contractor.

(g) *Permanent and temporary easements.* The cost of acquiring interests in lands outside the normal right-of-way is eligible for Federal participation as a right-of-way or construction item:

(1) For permanent use; such as for drainage or slope easements.

(2) For temporary use; such as for construction purposes or for right-of-way clearance.

(h) *Damages.* Federal funds may participate in severance or consequential damages, or both resulting from a highway project upon an affirmative showing that the acquiring agency is obligated to pay such damages under applicable law, provided that such damages are of a type generally compensable in eminent domain, and are determined by FHWA to be generally reimbursable on Federal-aid highway projects. Payments made for personal property (except as otherwise provided), loss of business or goodwill, circuity of travel, diversion of traffic, and other items of damage not generally compensable in eminent domain are not eligible for Federal participation.

(i) *Utility and railroad real property.* (1) If a utility or railroad is displaced by a federally assisted highway project, Federal funds may participate in the cost of real property acquired by a SHD, utility, or railroad to replace real property owned by the railroad or utility and conveyed to the SHD for highway right-of-way as provided in part 140, subpart I and part 645, subpart A of this chapter.

(2) Federal funds may participate in the cost of acquisition of non-operating real property of a utility or rail-

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road in the same manner as for other privately owned property.

(j) *Court deposits and interest thereon.* (1) Federal funds may participate in the amount deposited in court in connection with the condemnation of a parcel when the deposit is:

(i) The amount of the SHD's approved estimate of just compensation, or

(ii) The amount established by court order, or

(iii) The amount established by other means required under State law as a condition of the SHD's obtaining possession of the right-of-way.

When the amount deposited exceeds the amount of the final settlement or award, the Federal share of the excess deposit shall be promptly credited to the project or be deducted from any payment due the SHD from FHWA on any Federal-aid project.

(2) Where, in the opinion of FHWA, the total payments on progress vouchers for the Federal share of court deposits become excessive, further payment may be withheld until the situation is remedied. The Federal share of the total amount of court deposits, plus the Federal share of other eligible expenses incurred on a project may not exceed the Federal funds included in the project agreement.

(3) Federal funds may participate in the cost of interest on the amount of the deposit into court for a period of not to exceed 45 days, from the date of deposit, where due to court procedures the deposit is not immediately available to the owner. Federal funds may not participate in such interest costs where the deposit is available but the owner chooses not to withdraw it.

(4) Where a condemnation settlement or award exceeds the amount deposited into court, Federal participation may be allowed in interest paid on the amount in excess of the deposit from the date of the original deposit until the date of settlement or award. Where court procedures prevent the amount from being delivered immediately following settlement or award, Federal participation may be allowed in interest paid on the excess amount for a period not to exceed 45 days following such settlement or award. When the SHD appeals an award, Federal participation may be allowed in the required interest payment on the excess until 45 days after the final determination.

(5) Federal participation shall not be allowed in interest cost on payments to an owner where the SHD accepts a voluntary right of entry instead of making such payment available to the owner, either directly or by deposit with the court, except in cases of unusual circumstances with prior approval by FHWA. Where the final settlement or award exceeds the amount which could have been deposited or paid, Federal participation in interest costs on the amount of the excess may be allowed from the date of physical entry upon the parcel, in accordance with paragraph (j)(4) of this section.

(k) *Tenant owned improvements.* Federal participation may be allowed in payments made to a tenant for his buildings, structures, or other improvements which are acquired by a State to the extent that such payment is not a duplication of any payments otherwise authorized by law.

(l) *Exchanges of State owned lands.* When State owned lands are exchanged for lands required for highway purposes, Federal funds may participate in the current fair market value of the land being exchanged. This concept is conditioned in that participation in the total consideration, including land, any cash payments, and any construction features to mitigate damages, may not exceed the pro rata share of the fair market value of the land required for highway purposes plus damages.

(m) *Excess acquisitions.* When only a portion of a property is required for highway right-of-way or highway related needs and the SHD elects to acquire a larger portion or the whole property, Federal participation will be in accordance with one of the following alternatives selected by the SHD for statewide application, as set forth in its Right-of-Way Operations Manual. The provisions of this paragraph do not apply to uneconomic remnants.

(1) *First alternative.* Federal participation in the fair market value of the portion of the property required for

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the highway project plus damages, if any, to the remainder.

(2) *Second alternative.* (i) The purpose of this alternative is only to provide an alternative means of establishing the amount of damages where only a part of a property is required for federally assisted highway project purposes. There will be no Federal participation in any relocation costs associated with that part of the tract acquired which is outside the right-of-way.

(ii) An initial installment of the Federal pro rata share of the cost of the land required for the project determined by apportioning the land cost of the entire tract between the part required and part remaining solely on the basis of area, plus the cost of improvements necessarily removed for the project, less salvage value of the improvements.

(iii) A final installment, representing the Federal share of damages to the remainder, will be the difference between the initial costs of the excess property, prorated as in paragraph (m)(2)(ii) of this section, and the price realized at a public sale of the excess property. The sale must be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. Should condemnation proceedings prevent sale of the excess property within the time limits described, the excess may be disposed of within 12 months of when the SHD can legally do so.

(iv) Two or more excess areas may be combined and sold in one transaction if the SHD anticipates a higher overall return by such action.

(v) Should the SHD not dispose of the excess property within the time limits set forth in paragraph (m)(2)(iii) of this section, Federal participation shall be limited as under paragraph (m)(2)(ii) of this section unless an exception is granted by FHWA or unless an alternative disposal procedure has been accepted by FHWA.

(n) *Uneconomic remnants.* Federal funds may participate in the acquisition costs of uneconomic remnants whether or not the remnants are incorporated in the highway right-of-way.

(o) *Acquisition in connection with other Federal or federally-assisted programs.* (1) Rights-of-way may be acquired by the SHD for a Federal-aid highway in coordination or cooperation with other Federal or federally assisted programs. The SHD and the agency involved shall set forth in an agreement or memorandum of understanding the responsibilities of each in the acquisition of real property involved and the basis for the sharing of costs. Such agreements should be executed during early stages of project development, and will not jeopardize future Federal participation in costs to the SHD, if the agreement does not constitute a binding request for conveyance of specified lands. The agreement should be in effect when a request for authorization to acquire is submitted to FHWA.

(2) Federal funds may participate in obligations for costs incurred by a SHD after FHWA authorization to proceed. For purposes of paragraph (o) of this section an obligation is incurred by the SHD on the date that the SHD commits itself to the acquiring agency through a binding request for conveyance of specified lands.

(3) Federal (FHWA) participation in costs incurred by the SHD shall be determined on the following basis, unless prior approval is obtained from FHWA for participation on some other basis:

(i) Where the project of the acquiring agency, such as an urban renewal agency, is developed without consideration of the highway project, and the land has been cleared at the time the SHD requests conveyance of specified lands, Federal (FHWA) participation may not exceed its pro rata share of the appraised value of the cleared land required. The appraised value shall be mutually acceptable to the SHD and the other agency involved. Where the same conditions exist except that improvements have not been removed at the time of request for conveyance, Federal (FHWA) participation may not exceed the fair market value as determined by costs to the acquiring agency.

(ii) Where the project of the acquiring agency, such as an urban renewal

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agency, was continued after written knowledge that highway project would be involved, whether or not the exact location thereof was known, Federal (FHWA) participation may not exceed the fair market value as determined by cost to the acquiring agency. It would not matter whether any improvements were removed before or after a request for conveyance is submitted. The SHD must assure itself that such real property acquisitions are in compliance with title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, *et seq.*).

(iii) "Cost to the acquiring agency," for purposes of Federal (FHWA) participation, may include the fair market value payment, incidental acquisition expenses, settlement costs, and clearance and demolition costs, subject to the agreement between the parties, but shall exclude interest on borrowed money, and administrative and overhead expenses. (See also 49 CFR 24.6 regarding relocation matters.)

(iv) When the "cost to acquiring agency" forms the basis of value for participation, FHWA may accept either a parcel by parcel cost or an overall proration based on total area without regard to location of improvements within the acquiring agency's project area. Where a parcel by parcel basis is used, costs may be prorated on an area basis where only a part of a parcel is required for highway purposes.

(4) Where an urban renewal or any other such federally assisted agency performs work in connection with acquisition of rights-of-way for Federal or Federal-aid highway projects, FHWA may accept certifications of another Federal agency that the work has been performed in accordance with its governing regulations.

(p) *Separation of functions.* (1) Except as provided in 23 CFR part 750, subpart D, Federal funds may not participate in the cost of acquisition of a property, or related incidental costs, where:

(i) [Reserved]

(ii) Payments have been delivered in person by those who have negotiated, appraised, or acted as reviewing appraiser for the property, or

(iii) Payments have been delivered in person by the attorney who negotiated a settlement with the owner.

(2) The provisions of paragraph (p)(1) of this section apply whether such person was a salaried employee of the SHD or other acquiring agency, or was retained on a fee basis.

(q) *Construction in mitigation of damages.* Costs of construction performed by the SHD in order to mitigate damages to a remainder of real property are eligible for Federal participation, provided that such construction results in an appropriate reduction in compensation to be paid the owner.

(r) *Appraisal costs and minimum payment.* (1) If otherwise eligible, Federal funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation.

(2) Where the State prescribes a minimum payment, not to exceed $500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974, as amended at 40 FR 41524, Sept. 8, 1975; 41 FR 9321, Mar. 4, 1976; 50 FR 34092, 34093, Aug. 23, 1985; 54 FR 47075, Nov. 9, 1989]

§ 710.305 Support for claims.

(a) *Progress and final claims.* (1) Any progress or final claim for Federal fund reimbursement of expenditures made for right-of-way shall be supported by the following documents and information:

(i) A right-of-way map or plan showing the rights-of-way authorized and actually acquired including parcel identification numbers, area acquired, property lines of the area acquired, and any other pertinent data affecting the cost of right-of-way such as structures, improvements, and fences.

(ii) Statement of cost of right-of-way showing:

(A) Parcel number.

(B) Cost of parcel.

(C) Cost of excess land, if any, acquired from same ownership.

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(D) Credits by parcel or project.

(E) Incidental expenses by parcel or project.

(F) Cost of construction performed in mitigation of damages on a parcel basis, if claimed as a right-of-way item.

(2) The required documents and information may be submitted with the claim or made available in the SHD's files in readily identifiable form as determined appropriate by the FHWA in consultation with the SHD. Further, where a right-of-way map or plan which meets the requirements set forth in paragraph (a)(1)(i) of this section has been previously submitted, the FHWA may accept such map or plan for final or progress claim purposes.

(3) The information required in paragraph (a)(1)(ii) of this section may be submitted under current billing procedures where a memorandum of understanding on such procedures is in effect between the SHD and FHWA.

(b) *Document availability.* All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance and payment records, and other data and documents relative to the acquisition of the right-of-way shall be available for inspection at reasonable times by authorized representatives of the FHWA and other authorized Federal representatives.

(c) *Federal-aid project numbers.* Right-of-way plans, contracts, deeds, appraisals, options, vouchers, correspondence, and all other documents and papers to which FHWA needs to refer shall carry the Federal-aid project number for ready identification.

[39 FR 26416, July 19, 1974; 39 FR 45215, Dec. 31, 1974]

§ 710.306 Withholding Federal participation.

(a) If the FHWA determines that any amount claimed is not adequately supported, it may approve Federal participation in the amount it determines is adequately supported and shall notify the SHD, in writing, citing the reasons why items and amounts are not eligible for Federal participation. Where correctable noncompliance with provisions of law or FHWA requirements exists, Federal funds may be withheld until compliance is obtained. Where the noncompliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total.

(b) If, at any time, the FHWA determines that the organization, practices, and procedures actually applied by the SHD are not in substantial conformity with those accepted by the FHWA, or are otherwise not acceptable, the FHWA shall notify the SHD in writing. No further authorizations for acquisition of right-of-way shall be issued by the FHWA after the date of such notification until:

(1) A review of the facts substantiates to the satisfaction of FHWA that the SHD's accepted practices and procedures are satisfactory and will be adhered to by the SHD, or

(2) Revised practices and procedures have been submitted by the SHD and accepted by FHWA. The FHWA may participate in claims made or to be made by the SHD following review of the facts pertaining to the matter.

Subpart D—Civil Rights

§ 710.401 Purpose.

To prescribe the general policy of the Federal Highway Administration (FHWA) in the area of civil rights relative to the right-of-way acquisition function.

§ 710.402 Applicability.

The provisions of this section apply to all States and political subdivisions thereof which receive Federal financial assistance in connection with the Federal-aid highway program.

§ 710.403 Definitions.

As used in this subpart:

(a) "Recipient" means any State, territory, possession, the District of Columbia, Puerto Rico; any political subdivision or instrumentality thereof; any public or private agency, institution, organization, or other entity; or any individual in any State, territory, possession, the District of Columbia or Puerto Rico to whom Federal financial assistance is extended, directly or

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through another recipient, for any program, including any successor, assignee, or transferee thereof; but such term does not include any ultimate beneficiary under any such program.

(b) "Program" refers to the Federal-aid highway program under 23 U.S.C. 101, *et seq.*

§ 710.404 Policies.

(a) *Section 601 of title VI, Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.)*: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

(b) *Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324)*: "No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive, and will not prejudice or cut off any other legal remedies available to a discriminatee."

(c) *Equal Employment Opportunity.* (1) The FHWA's equal employment opportunity responsibilities have their basis in the Civil Rights Act of 1964, Executive Orders 11246, 11247, and 11375 and related rules, regulations, and procedures of the Civil Service Commission, the Department of Labor, the Department of Justice, the Department of Transportation, and the Equal Employment Opportunity Commission. These direct that affirmative and positive measures be taken to insure equal opportunity of employment in federally assisted programs and projects.

(2) It is the policy of the FHWA that every employee and representative of agencies to which this directive applies shall perform all official actions affirmatively and in full accord with the spirit and letter of the Constitution and applicable laws, regulations, and policies to assure equality of opportunity for all persons, and to avoid even the appearance of discrimination because of race, creed, color, sex, or national origin.

§ 710.405 Regulations.

(a) Section 602 of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) states in pertinent part that each Federal agency empowered to extend Federal financial assistance is authorized and directed to effectuate the provision of section 601 by issuing the necessary rules, regulations, and orders. Pursuant to this requirement, 49 CFR part 21 was issued by the Office of the Secretary of Transportation.

(b) In accordance with 23 U.S.C. 324, prohibition of discrimination on the ground of sex has been added to the provisions of 49 CFR part 21 included within this directive.

(c) *Discriminatory action prohibited.* (1) A recipient may not directly or through contractual or other arrangements, on the grounds of race, color, sex, or national origin:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his or her receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person, in any way, in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit, provided under the program; or

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(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise, or afford him or her an opportunity to do so which is different from that afforded others under the program.

(2) In determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such programs, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, sex or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex or national origin.

(3) In determining the site or location of facilities, a recipient may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this directive applies, on the grounds of race, color, sex or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI of the Civil Rights Act of 1964 or this directive.

(4) As used in this directive, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance, include any service, financial aid, or other benefit provided in or through a facility receiving Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this directive does not limit the generality of the prohibition in § 710.404(a) and § 710.404(b).

(6) The provisions of this directive do not prohibit the consideration of race, color, sex or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, sex or national origin. Where previous discriminatory practice or usage tends, on the ground of race, color, sex or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this directive applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Civil Rights Act of 1964.

(d) *Specific discriminatory actions prohibited.* (1) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for or incidental to, acquisition of right-of-way, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisition of right-of-way.

(2) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway acquisition of right-of-way.

(3) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over, or under the right-of-way of such highways.

(4) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects assisted by the Federal Highway Administration.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any in-

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dividual for the purpose of interfering with any right or privilege secured by Section 601 of the Civil Rights Act of 1964 or 49 CFR part 21, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 49 CFR part 21.

(f) *State civil rights assurances.* Each State highway department has executed a title VI Assurance providing that specific nondiscrimination provisions, as set forth in appendix A to the Assurance, will be included in every contract subject to the Civil Rights Act of 1964 and the DOT title VI Regulations (49 CFR part 21). The Assurance further provides that the provision of appendix C thereof shall be included in any future deeds, leases, permits, licenses, and similar agreements entered into by the State with other parties (1) for the subsequent transfer of real property acquired or improved under the Federal-aid highway program, and (2) for the construction or use of or access to space on, over, or under real property acquired, or improved, under the Federal-aid highway program. Accordingly, the provisions of appendix A of the title VI Assurance shall be included in all personal service right-of-way contracts, and the provisions of appendix C to the title VI Assurance shall be included in those documents enumerated above.

PART 712—THE ACQUISITION FUNCTION

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AUTHORITY: 23 U.S.C. 101(a), 107, 108, 111, 114, 204, 210, 308, 315, 317 and 323; 42 U.S.C. 2000d-1, 4633, 4651-4655; 49 CFR 1.48(b) and part 24; 23 CFR 1.32.

Subpart A—[Reserved]

Subpart B—General Provisions and Project Procedures

§ 712.201 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) project provisions and procedures relating to the acquisition of real property for highway and highway related projects.

[39 FR 29591, Aug. 16, 1974]

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§ 712.202 Applicability.

(a) The provisions of § 712.203 of this subpart are applicable to all States and political subdivisions thereof that acquire real property for any highway or highway related project where Federal funds will participate in any part of the cost of the project.

(b) The provisions of § 712.204 of this subpart are applicable to all States and political subdivisions thereof where Federal funds will participate in any part of the right-of-way costs of the project.

[39 FR 29591, Aug. 16, 1974]

§ 712.203 General provisions.

(a) *Real property interest to be acquired.* (1) On federally assisted highway projects, the acquiring agency shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of the project.

(2) Where State law permits, rights-of-way for Federal-aid highways shall be acquired in unlimited vertical dimension unless savings in the overall cost of a project, or other considerations in the public interest, such as plans for community development or multiple use, support the acquisition of rights-of-way of limited vertical dimension. Where the acquisition is in limited vertical dimension, the rights acquired shall be sufficient to encumber the unacquired realty with provisions which will ensure full use and safety of the highway facility to be constructed.

(3) Subsurface mineral rights may be reserved to the owner thereof where the acquisition of such rights is not reasonably necessary for the construction, protection, support, and preservation of the highway facility to be constructed.

(b) *Use and occupancy of right-of-way.* (1) All real property, including airspace, within the right-of-way boundaries of a project shall be exclusively devoted to public highway purposes and preserved free of all public and private installations, facilities, and encroachments except as authorized by FHWA.

(2) Use of airspace for nonhighway purposes shall be in accordance with the provisions of 23 CFR part 713, subpart B.

(3) Joint development and multiple use of highway rights-of-way shall be in accordance with the provisions of Volume 7, Chapter 7, section 8, of the Federal-Aid Highway Program Manual.[1]

(4) Railroads and utilities may be accommodated in accordance with the provisions of 23 CFR part 645, subpart B.

(5) Bikeways and pedestrian walkways may be accommodated in accordance with the provisions of 23 CFR part 652.

(c) *Public information brochure.* The State highway department shall prepare a brochure adequately describing the land acquisition process under State law, and the owner's rights, privileges, and obligations thereunder. The information contained therein should be clearly presented in nontechnical terms to the extent practicable. Where appropriate, such brochure should be written in a language in addition to English.

(d) *Reviewing appraiser.* The reviewing appraiser shall place in the parcel file a signed and dated statement setting forth:

(1) The estimate of just compensation including, where appropriate, the allocation of compensation for the real property acquired and for damages to remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which he considered to be a part of the real property to be acquired if such allocation or listing differs from that of the appraisal(s).

(2) The value estimate of items compensable under State law but not eligible for Federal reimbursement, if any.

[39 FR 29591, Aug. 16, 1974, as amended at 50 FR 34093, Aug. 23, 1985]

[1] Copy of this directive is available at FHWA offices listed in 49 CFR part 7, appendix D.

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§ 712.204 Project procedures.

(a) *Programming.* Any phase of right-of-way related work in which Federal funds are to participate shall be programmed in accordance with the provisions of 23 CFR part 630, subpart A.

(b) *Authorizations—general.* (1) The SHD shall request, in writing, FHWA authorization to proceed with right-of-way acquisition if Federal funds are to participate in the costs related thereto.

(2) Acquisition of real property or interests therein for highway or highway related purposes which are determined necessary by project design requirements or other FHWA policy requirements may be authorized by FHWA, including:

(i) Real property or interests therein pursuant to 23 CFR part 772, and

(ii) Whole properties or portions thereof to a logical boundary or barrier, thus avoiding severance damage payments and providing a highway facility more in conformity with the neighborhood through which it passes.

(c) *Authorizations.* Concurrent with or subsequent to program approval, FHWA may, in response to a SHD's request:

(1) Authorize the SHD to proceed with those right-of-way activities necessary for the completion of the final environmental impact statement or environmental assessment and preparation for public hearings, or

(2) Authorize the SHD to proceed with all preliminary right-of-way activities, including property appraisals, up to but not including negotiations, with the condition that appraisals of partial takings will not be made until the SHD has prepared right-of-way plans, or

(3) Authorize the SHD to proceed with those right-of-way activities enumerated in paragraph (c)(2) of this section, and authorize the acquisition of rights-of-way on a project with the stipulation that the following requirements will be met before acquisition will commence:

(i) [Reserved]

(ii) The provisions of 23 CFR part 771 of this chapter have been met relative to environmental impact statements, findings of no significant impact, and public hearing transcripts and certifications, and

(iii) Where applicable, the provisions of 23 CFR part 771 of this chapter have been met relative to section 4(f) evaluations.

(d) *Authorizations—hardship acquisition and protective buying.* (1) In extraordinary cases or emergency situations the State highway department may request and the Federal Highway Administrator may approve Federal participation in the acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to completion of processing of the final environmental impact statement or adoption of the negative declaration, but only after (i) the State highway department has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, or (ii) a public hearing has been held or an opportunity for such a hearing has been afforded. Proper documentation shall be submitted to show that the acquisition is in the public interest and is necessary to:

(A) Alleviate particular hardship to a property owner, on his request, in contrast to others because of an inability to sell his property;

(B) Prevent imminent development and increased costs of a parcel which would tend to limit the choice of highway alternatives.

(2) Hardship acquisition and protective buying procedures shall not apply to properties subject to the provisions of 49 U.S.C. 1653(f) (commonly known as section 4(f)) or 16 U.S.C. 470(f) (historic properties) until the required section 4(f) determination and the procedures of the Advisory Council on Historic Preservation are completed.

(3) Acquisition of property under § 712.204(d) shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

(4) Ultimate Federal participation in the cost of property acquired under § 712.204(d) is dependent upon the incorporation of such property in the

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final highway right-of-way. Where a parcel is partially incorporated, Federal participation will be in accordance with the alternative selected for statewide application pursuant to 23 CFR 710.304(m).

(5) Subject to paragraphs (d)(2) and (3) of this section, a SHD may acquire property with its own funds under § 712.204(d) before FHWA program approval and not jeopardize Federal participation in subsequent project costs provided the SHD's acquisition activities comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d) *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), and 49 CFR part 24. Costs so incurred are not eligible for Federal participation.

(e) *Public hearings.* Information shall be presented and an opportunity provided for discussion of the land acquisition process at public hearings, in order to assure that the public is adequately informed.

(f) *Project field inspections.* Right-of-way personnel shall make project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant right-of-way elements involved in the location and design of the project including possible social, economic, and environmental effects.

(g) *Right-of-way project agreements.* (1) Project agreements and modifications thereof shall be prepared and executed in accordance with part 630, subpart C of this chapter.

(2) Project agreements may be entered into at any time after Federal funds have been obligated on the project. The estimate of cost of right-of-way required for programming a project may be used for project agreement purposes, provided a more accurate and up-to-date estimate is not available.

(3) Project agreements covering acquisition of right-of-way shall, pursuant to 23 U.S.C. 108(a), contain a clause providing for the refund of any payments made by the FHWA in the event that actual construction of a road on such rights-of-way is not undertaken by the close of the 10th fiscal year following the fiscal year in which the agreement was executed. Pursuant to a State's written request, FHWA may approve a longer period which is determined to be reasonable. The SHD will be considered in compliance with the statutory requirements where, before the expiration of the approved period, it has taken all of the following actions:

(i) Awarded a contract for construction of a reasonable section of the highway covered by the agreement,

(ii) Proceeded with sufficient actual work to give visual evidence thereof at the construction site, and

(iii) Provided evidence of good faith to proceed without delay to complete construction of the highway upon the entire length of right-of-way covered by such project agreement.

[39 FR 29591, Aug. 16, 1974, as amended at 40 FR 33445, Aug. 8, 1975; 41 FR 9321, Mar. 4, 1976; 41 FR 24347, June 16, 1976; 42 FR 26652, May 25, 1977; 50 FR 34092, 34093, Aug. 23, 1985; 52 FR 32669, Aug. 28, 1987; 54 FR 47076, Nov. 9, 1989]

Subpart C—[Reserved]

Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

SOURCE: 39 FR 29593, Aug. 16, 1974, unless otherwise noted.

§ 712.401 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies relating to settlement of acquisitions through administrative means and legal processes.

§ 712.402 Definitions.

As used in this subpart:

(a) *Administrative settlement.* Any settlement, made or authorized to be made by the responsible State highway department (SHD) official, which is in excess of the SHD's approved estimate of just compensation.

(b) *Legal settlement.* Any settlement made by the responsible State legal representative. This includes stipulated settlements approved by the court in which the condemnation action has been filed.

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(c) *Court award.* Any decision following a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

§ 712.403 Applicability.

The provisions of this subpart are applicable in the acquisition of real property for a highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

§ 712.404 Administrative settlements.

Administrative settlements on Federal and federally-assisted highway projects are governed by the provisions of 49 CFR 24.102(i).

[50 FR 34092, Aug. 23, 1985, as amended at 54 FR 47076, Nov. 9, 1989]

§ 712.405 Legal settlements.

(a) The SHD shall identify the legal office or official responsible for making legal settlements. The coordination which will be followed between the legal office and the right-of-way office prior to making any settlement shall be described.

(b) The legal office or official may make a legal settlement when it is determined that such action is in the public interest. Legal settlements which are based upon new or revised appraisal data as the principal justification shall be coordinated with and approved by the responsible official of the acquiring agency having final authority over the right-of-way matters.

(c) The appropriate State file shall be documented whenever a legal settlement in excess of the amount established as just compensation is made. The rationale for the settlement shall be set forth in writing. Federal funds may participate in legal settlements made and documented in accordance with the provisions of this paragraph.

§ 712.406 Court awards.

Federal funds may participate in excess of the amount established as just compensation if there is supporting documentation in the appropriate State file which includes:

(a) A trial report, signed by the trial attorney.

(b) A signed statement of the legal counsel in charge of representing the State in condemnation litigation stating his concurrence in the reasoning and disposition of the case.

§ 712.407 Noncompensable items.

Should the administrative settlement, legal settlement or the court award include an apparent payment for items considered ineligible for Federal participation, the amount paid for such items shall be determined by the SHD and excluded from the SHD's claim for Federal participation in the settlement or award.

§ 712.408 Special counsel.

(a) If part-time assistants or legal counsel are regularly employed for Federal-aid right-of-way procurement and this is set forth in the SHD's manual or procedures and accepted by FHWA, reimbursement may be claimed for the eligible cost of the services of such attorney. Advance FHWA approval shall be obtained for the employment of special counsel for a particular project, if not covered in the accepted State plan. Federal participation may be allowed upon a proper showing that:

(1) The employment of special counsel is in the public interest,

(2) The fee is reasonable, and

(3) The fee is not on a percentage basis.

(b) Federal participation shall not be permitted in payment made to a city or county attorney for work performed in connection with the acquisition of rights-of-way where he is obligated to perform such work without additional compensation. In those cases where the normal duties of the attorney for which he is compensated do not include the acquisition of property for highway purposes, Federal funds may participate in payments to him for services performed upon a proper showing of the facts.

[39 FR 29593, Aug. 16, 1974; 39 FR 34277, Sept. 24, 1974]

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Subpart E—Federal Land Transfers and Direct Federal Acquisition

§ 712.501 Purpose.

This regulation prescribes Federal Highway Administration (FHWA) policies and procedures relating to Federal land transfers and direct Federal acquisition.

[39 FR 32604, Sept. 10, 1974]

§ 712.502 Applicability.

The provisions of § 712.503 of this subpart apply to all projects on a Federal-aid system, direct Federal projects, or federally assisted highway projects. The provisions of § 712.504 apply only to Interstate, Defense Access, and Forest highways.

[39 FR 32604, Sept. 10, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

§ 712.503 Federal land transfers.

(a) Title 23 U.S.C., sections 107(d) and 317, provide for the transfer of lands or interests in lands owned by the United States to a State Highway Department (SHD) or its nominee for highway purposes.

(b) If lands or interests in lands owned by the United States are needed for highway purposes, the SHD shall pursuant to 23 U.S.C. 107(d) and 317 file an application with the FHWA except that if such lands or interests therein are managed or controlled by the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs, the SHD may make applications directly to said agencies or their land acquisition agent as indicated in appendix 1. All applications shall include or be accompanied by the information shown in appendix 1.

(c) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the SHD, unless the FHWA at its discretion chooses to prepare them. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). When the SHD prepares the deed, it will submit the proposed deed to the FHWA for review and execution. Following execution, the grantee shall record the deed in the appropriate land record office and so advise the FHWA of the recording data.

(d) When the need for the lands or the materials acquired under this subpart no longer exists, notice of that fact must be given by the SHD to the FHWA and to the concerned Federal agency, and such lands or materials will revert to the control of the Federal agency from which they were appropriated or to its assigns. The notice, in a form suitable for recording, shall state that the need for the lands or materials no longer exists for the purposes for which acquired.

[39 FR 32604, Sept. 10, 1974; 39 FR 33797, Sept. 20, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 712.504 Direct Federal acquisition.

(a) Title 23 U.S.C. 101(a), 107, and 210(e) authorize Federal acquisition of lands and interests in lands for any project authorized for Interstate, defense Access or Forest highways where the State is unable to acquire the required rights-of-way or it is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary findings to proceed with the acquisition of the rights-of-way, the SHD's written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SHD to commence right-of-way acquisition, the date the project was advanced to Stage 2 program status, the date of the project agreement and a statement that the agreement contains the provisions required by sections 108(a), 108(b), and 111 of Title 23, U.S.C.;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The SHD's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

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(6) A statement on compliance with the provisions of part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the agency with landowners;

(9) An agreement that the SHD will pay its pro rata share of costs, including but not limited to those set forth in § 712.504(f) incurred in the acquisition of, or the attempt to acquire rights-of-way; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*).

(c) If the landowner tenders a right-of-entry at any time before the FHWA makes a determination that the SHD is unable to acquire the rights-of-way with sufficient promptness, the SHD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the SHD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the Court for the affected parcel be withdrawn after the appropriate motions are approved by the Court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the SHD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the SHD is not intended to preclude the U.S. Attorney from taking action, before the SHD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal Court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property as will in the opinion of the court reimburse him for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

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(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under these provisions, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SHD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may be set forth in the deed; and

(5) Notify FHWA at the appropriate time that all the conditions have been performed by the State.

(i) The Deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

[39 FR 32604, Sept. 10, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

Appendix 1 to Subpart E—Application for Federal Land Transfers

(1) *Preparation of application*

The State's application, referenced in § 712.503, shall include or be accompanied by the following information:

(a) The purpose for which the lands are to be used.

(b) The estate or interest in the land required by State statute.

(c) The Federal-aid project number.

(d) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land.

(e) A commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than 10 years following the transfer of the lands to the State.

(f) A map showing the survey of the lands to be acquired.

(g) A legal description of the lands desired.

(h) A statement on compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*), the Historic Preservation Act (16 U.S.C. 470(f)), and with provisions for Preservation of Parklands (49 U.S.C. 1653(f)), if applicable.

(2) *Submission of application.*

The application referenced in § 712.503 shall be submitted to FHWA, except as otherwise prescribed herein. Certain Federal agencies have special legislation for granting rights-of-way over lands under their jurisdictions and may proceed under their own laws. In those cases, the SHD should file its application directly with the Federal agency. Although they have special authority, the Federal agencies sometimes wish to proceed under 23 U.S.C. 107(d) and 317 and, in such cases, the application should be filed with the FHWA. The agencies having special authority which would permit the State to file its application directly are as follows:

(a) *Bureau of Indian Affairs.* Application should be submitted directly to the Bureau of Indian Affairs, Washington, DC, for rights-of-way across tribal lands or individually owned lands held in trust by the United States or encumbered by Federal restrictions. All other lands held by the Bureau of Indian Affairs are transferred under 23 U.S.C. 107(d) and 317.

(b) *Army or Air Force.* State should submit its application directly to the installation commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.

(c) *Navy.* State should submit its application directly to the District Public Works Officer of the Naval District involved.

(d) *Veterans Administration.* State should submit its application directly to the Director, Veterans Administration, Washington, DC.

[39 FR 32604, Sept. 10, 1974]

Subpart F—Functional Replacement of Real Property in Public Ownership

Source: 39 FR 33312, Sept. 17, 1974, unless otherwise noted.

§ 712.601 Purpose.

This regulation prescribes Federal Highway Administration (FHWA) policies on functional replacement of real property in public ownership.

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§ 712.602 Applicability.

The provisions of this regulation are applicable, to the extent practicable under State law, to all States and political subdivisions thereof that acquire real property for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. The provisions of this regulation do not apply to real property owned by utilities or railroads.

§ 712.603 Federal Lands.

Acquisition of real property in Federal ownership shall be in accordance with FHWA regulations on Federal land transfers in 23 CFR 712.501 *et seq.*

§ 712.604 Functional replacement.

(a) Where the State highway department (SHD) so requests, and can, pursuant to State law, incur costs for the functional replacement of real property in public ownership, Federal funds may participate in such replacement costs provided that it is demonstrated, and FHWA concurs, that functional replacement is in the public interest. Application of functional replacement procedures is at the SHD's election, subject to FHWA approval of a SHD's request.

(b) For the purpose of this regulation, functional replacement is defined as the replacement of real property, either lands or facilities, or both, acquired as a result of a highway or highway related project with lands or facilities, or both, which will provide equivalent utility.

(c) Application of this policy, and Federal participation in costs pursuant thereto require that:

(1) The property to be functionally replaced is in public ownership,

(2) State law permits the incurrence of functional replacement costs,

(3) FHWA has concurred that functional replacement is in the public interest,

(4) FHWA has granted authorization to proceed on such basis prior to incurrence of costs,

(5) The functional replacement actually takes place, and the costs of replacement are actually incurred, and

(6) Replacement sites and construction are in compliance with existing codes, laws, and zoning regulations for the area in which the facility is located.

§ 712.605 Federal participation.

(a) Federal funds may participate in functional replacement costs on the following basis:

(1) The actual functional replacement cost of the facilities required to be replaced, and

(2) The appraised current fair market value of the land to be acquired for highway purposes when the owning agency has land on which to relocate the facilities, or the reasonable costs of acquiring a functionally equivalent substitute site where lands in the same public ownership are not available or suitable.

(b) Costs of increases in capacity and other betterments are not eligible for Federal participation except those necessary to replace utility; those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced.

(c) Where it is found that the appraised fair market value of the property to be acquired exceeds the cost of functional replacement. Federal funds may participate in the fair market value amount.

§ 712.606 Procedures.

(a) During the early stages of project development, SHD officials should meet with the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement procedures. The results of discussions and decisions concerning functional replacement should be included in negative declarations and environmental impact and section 4(f) statements if required on a project.

(b) At the earliest practicable time, the SHD shall have the property appraised and establish an amount it believes to be just compensation, and shall advise the owning agency of the amount established. Subject to the requirements of this regulation, the owning agency has the option of ac-

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cepting the amount of compensation established by the appraisal process or accepting functional replacement. The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

(c) If the owning agency desires functional replacement, it should initiate a formal request to the SHD, and fully explain why it would be in the public interest.

(d) If the SHD agrees that functional replacement is necessary and in the public interest, it must submit a specific request for FHWA concurrence. The request should include:

(1) Cost estimate data relative to contemplated solutions,

(2) Agreements reached at meetings between the SHD and the owning agency, and

(3) An explanation of the basis for its request.

The request shall include a statement that replacement property will be acquired in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable FHWA regulations.

(e) After concurrence by FHWA that functional replacement is in the public interest, FHWA may, at SHD request, authorize the SHD to proceed with the acquisition of the substitute site and to proceed with physical construction of minor structures, or, in the case of major improvements, to proceed with development of detailed plans, specifications and estimates.

(f) The plans, specifications, and estimates, and modifications thereof, shall be submitted to FHWA for review and approval in accordance with established procedures. Where major improvements are involved, advertising for bids and letting of the contract to construct the replacement facility may follow the general procedures utilized by the owning agency, if acceptable to the SHD and FHWA. The submission, where applicable, shall include provisions for SHD inspection during construction of the replacement facility.

(g) Prior to FHWA concurrence in the awarrd for actual construction, an agreement shall be entered into setting forth the rights, obligations and duties of each party with regard to the faculty being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The executed agreement shall also set forth how the costs of the new facility are to be shared between the parties.

(h) The SHD's request for final payment shall include:

(1) A statement signed by an appropriate official of the owning agency and the SHD certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement.

(2) The statement shall also certify that a final inspection of the facility was made by the SHD and owning agency and that the SHD is released from any further responsibility.

Subpart G—Right-of-Way Revolving Fund

§ 712.701 Purpose.

To prescribe Federal Highway Administration (FHWA) policy and procedure for the advance acquisition of rights-of-way using the right-of-way revolving fund established under 23 U.S.C. 108(c).

[39 FR 26421, July 19, 1974. Redesignated at 39 FR 28629, Aug. 9, 1974]

§ 712.702 Policies.

(a) A revolving fund has been established for the purpose of acquiring rights-of-way for future construction of highways on any Federal-aid system.

(b) The funds advanced may be used to pay the entire costs (State and Federal share) of projects for the acquisition of rights-of-way, including related moving and relocation payments and last resort housing, utility relocations, and the net cost to the State of property management. Advancement of cash, repayment of cash, and accounting requirements shall be in accordance with 23 CFR part 130, subpart D.

(c) Revolving funds and obligational authority will be allocated by FHWA to individual projects on a need-for-and-ability-to-use basis.

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(d) Actual construction of a highway on rights-of-way, with respect to which revolving funds are advanced, shall be commenced within a period of not less than 2 years nor more than 10 years following the end of the fiscal year in which the advance of funds is made to the right-of-way project, unless FHWA in its discretion shall provide an earlier or later termination date.

[39 FR 26421, July 19, 1974. Redesignated at 39 FR 28629, Aug. 9, 1974, and amended at 41 FR 9321, Mar. 4, 1976; 41 FR 24347, June 16, 1976]

§ 712.703 Procedures.

(a) When a State highway department has a project it wishes to finance from the revolving fund or additional funds are needed for an existing revolving fund project, a letter asking for allocation of funds shall be submitted to FHWA.

(b) If funds are available, FHWA will allocate them to a specific project and authorize obligation of such funds.

(c) After the State has been advised of fund allocation, the project shall be programed, and right-of-way work shall be authorized by FHWA under regular Federal-aid procedures. Each regular project prefix number shall be preceded by the letter Q. The FHWA letter of authorization to proceed shall constitute an obligation of the right-of-way revolving fund. Revolving fund projects are subject to environmental, location, and design requirements in the same manner as regular Federal-aid projects.

(d) All right-of-way work on revolving fund projects shall be accomplished in accordance with procedures and requirements applicable to regular Federal-aid projects.

(e) If situations should develop which prevent work from progressing on individual right-of-way revolving fund projects in a timely manner, the State shall notify FHWA so that the obligational authority may be withdrawn.

[39 FR 26421, July 19, 1974. Redesignated at 39 FR 28629, Aug. 9, 1974, and amended at 47 FR 10530, Mar. 11, 1982]

Subpart H—Land Service Facilities

SOURCE: 42 FR 8, Jan. 3, 1977, unless otherwise noted.

§ 712.801 Purpose.

The purpose of this regulation is to establish policy guidelines within the right-of-way acquisition process for Federal participation in the costs of land service facilities designed to provide or restore access to properties affected by a highway facility.

§ 712.803 Applicability.

The provisions of this regulation apply where Federal funds are participating in any part of the cost of a highway project.

§ 712.805 Policies.

(a) *General.* (1) The construction of highways occasionally changes access conditions in a manner which may seriously inconvenience the general public as well as the private property owner. Land service facilities such as private roads, frontage roads, sidewalks and pedestrian separations, and combination drainage and vehicular or stock passes may be incorporated into the highway design in order to reduce the disruptive effect the highway may have on a particular community, on recreational activities and wildlife, or on the operation of a farm, ranch, or other business which the highway location severs.

(2) Whenever practicable, land service facilities should be designed and located to service more than one property or purpose. Whenever land service facilities are provided to serve more than one property owner, the rights of each owner to use the facility must be granted in a recordable legal instrument.

(3) Efforts should be made to utilize or extend existing land service facility structures to the extent appropriate. Where there are existing facilities over or under a Federal-aid highway, Federal funds may participate in the construction of similar land service facilities to cross added parallel lanes provided land use and land use patterns have not changed in a manner

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which diminishes the need for such a facility.

(b) *Public use and benefit.* (1) The construction of land service facilities which are designed for public use, or to provide access for multiple landowners shall be justified as a part of the normal design development process.

(2) Justification for incorporating land service facilities designed for public use into the highway design includes, but is not limited to considerations such as: highway safety, access to recreation areas, police and fire protection, preservation or enhancement of area economy, equitable treatment of property owners, servicing utility facilities, restoration of local vehicular or animal circulation, conservation and development of natural resources (including wildlife) and other environmental considerations.

(c) *Private use and benefit.* (1) Land service facilities designed for restoration of access to and within a privately owned property shall be justified primarily on the basis of economics. In exceptional cases where the land service facility is not justified economically, but it is believed that access is nevertheless in the public interest, the recommendation and justification for perpetuation to access are to be submitted to the FHWA for prior consideration.

(2) The actual cost of providing a land service facility to cross under or over a highway may vary widely, depending on the type and width of the highways to be built. A common cost basis may be used for comparative purposes in determining mitigation of damages to a property in these cases. The basis may apply regardless of the actual cost of the proposed structure. The basic economic formula consists of the following computations:

(i) Based on substantiated before-and-after estimates, determine the difference between the current fair market value of the property without the proposed facility and the current fair market value with the proposed facility.

(ii) The difference determined in paragraph (c)(2)(i) of this section would then be compared with the current estimated construction costs of a land service facility required to cross over or under a hypothetical two-lane highway calculated in accordance with the following criteria:

(A) The structural elements of the cross section of the structure are to be the State's design standard or typical section for the specific service to be provided, and

(B) For comparison purposes only, the dimensions of the cross section elements used to establish the maximum length of overcrossing or undercrossing structure will be those provided for in the State's minimum design standards for the particular highway class, with the following limitations: pavement width shall not exceed 24 feet (±7.32 metres), shoulder width 10 feet (±3.05 metres), depth of cover 8 feet (±2.44 metres), and fill slopes not to be flatter than 2:1.

(iii) Generally, if the hypothetical construction costs calculated according to paragraphs (c)(2)(ii) (A) and (B) of this section exceed the difference determined in paragraph (c)(2)(i) of this section, the proposed land service facility cannot be considered to be economically justified.

(3) When proposed highway structures which have been determined to be necessary under applicable design standards are modified for combination highway and private use as a land service facility, the structure costs to be utilized in the economic comparison should not include those costs required to meet the highway design needs.

(4) Participation in private use land service facilities is based on the inclusion of a right-of-way item in an approved Federal-aid program as defined in part 630, subpart A, of this chapter. Land service facilities designed for private use and benefit may be included in a construction project as a right-of-way item of cost.

(5) Federal funds may participate in payments made to the property owner based upon the appraised value without the land service facility. Federal funds shall not participate in the payment to the property owner of the estimated construction costs of a land service facility justified under this regulation in lieu of the actual construction of such a facility.

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PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

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AUTHORITY: 23 U.S.C. 101(a), 142(g), 156, and 315; 42 U.S.C. 4633 and 4651; 23 CFR 1.32; 49 CFR 1.48(b) and parts 21 and 24.

SOURCE: 39 FR 34651, Sept. 27, 1974, unless otherwise noted.

Subpart A—Property Management

§ 713.101 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for the management of real property acquired in connection with Federal-aid highway projects.

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project.

[50 FR 34093, Aug. 23, 1985]

§ 713.103 Policies and procedures.

(a) The State highway department (SHD) shall establish property management policies and procedures that will assure control and administration of lands and improvements acquired for right-of-way purposes. These procedures shall establish:

(1) Property records showing:

(i) An inventory of all improvements acquired as a part of the right-of-way;

(ii) An accounting of the property management expenses and the rental payments received; and

(iii) An accounting of the disposition of improvements and the recovery payments received.

(2) Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the contract for the physical construction of the project.

(3) The methods for managing the rodent control program.

(4) The methods for employing private firms or public agencies for the management of real property.

(5) The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

(b) [Reserved]

(c) Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

(d) The acquiring agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

(e) Clearing acquired improvements under a clearing contract is considered:

(1) A right-of-way item when the clearing is performed separately from the contract for physical construction. The applicability of the provisions of volume 6, chapter 4, of the Federal-Aid Highway Program Manual[1] shall

[1]The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

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be determined in accordance with the criteria set forth for the requirement of wage determinations in the FHWA Labor Compliance Manual.[2]

(2) A construction item within the provisions of volume 6, chapter 4, of the Federal-Aid Highway Program Manual[2] when the clearing is performed as a part of the physical construction contract.

(f) Rodent control procedures shall assure that the acquiring agency:

(1) Determines and documents the need for extermination services through periodic field inspections.

(2) Coordinates with other interested agencies, such as State, county, and city health departments, and

(3) Completes required extermination measures prior to demolition or removal of improvements.

(g) Acquired rights-of-way shall be maintained in a manner which will prevent or correct problems such as illegal dumping or disposal of rubble, debris, and garbage on cleared Federal-aid highway right-of-way until needed for construction.

(h) Where the acquired right-of-way includes areas for future construction, in addition to that required for immediate construction, the SHD may permit or lease the temporary use of this area until it is needed for highway purposes. The SHD may allow this temporary use when:

(1) The FHWA has approved temporary right-of-way limits within the overall right-of-way;

(2) The integrity and safety of the highway facility constructed elsewhere on the right-of-way are assured; and

(3) There is no decrease in the extent of access control to the highway facility constructed elsewhere on the right-of-way.

[39 FR 34651, Sept. 27, 1974, as amended at 50 FR 34093, Aug. 23, 1985]

[2]The FHWA Labor Compliance Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

Subpart B—Management of Airspace

§ 713.201 Purpose.

To prescribe Federal Highway Administration (FHWA) policies relating to the management of airspace on Federal-aid highway systems for nonhighway purposes.

§ 713.202 Applicability.

(a) The provisions of this subpart apply to the use of airspace on the Federal-aid highway systems, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal-aid highway rights-of-way, nor to relocations of railroads or utilities for which reimbursement is claimed under subparts H and E of part 140 of this chapter; joint development and multiple use of highway rights-of-way as covered in volume 7, chapter 7, section 8 of the Federal-Aid Highway Program Manual;[3] and bikeways and pedestrian walkways as covered in part 652 of this chapter.

§ 713.203 Definition.

Air space, as used in this subpart, is that space located above, at, or below the highway's established gradeline, lying within the approved right-of-way limits.

§ 713.204 Policies.

(a) Where a State highway department (SHD) has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a Federal-aid system to permit the use of certain airspace for nonhighway purposes, and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the SHD subject to prior FHWA approval.

[3]The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

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(b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for nonhighway purposes except under the provisions of subpart A of this part, relating to property management.

(c) In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway system to accommodate needed rail or nonhighway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the FHWA may authorize a SHD to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes whenever it may deem that the public interest will be served thereby.

(d) If found to be consistent with highway designs, any portion of right-of-way may be used for green strips, small parks, play areas, parking or other highway related public use, or for any other public or quasi-public use which would assist in integrating the highway into the local environment and enhancing other publicly supported programs. Normally, the SHD should retain supervision and jurisdiction over such lands but could enter into agreements with local political subdivisions relative thereto.

(e) An individual, company, organization, or public agency desiring to use airspace as defined herein shall submit an application therefor to the SHD in a manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA together with SHD recommendations for approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart where such are appropriate to the intended use.

(f) All nonhighway use of airspace shall be covered by a properly executed airspace agreement. The agreement shall contain the following:

(1) The party responsible for developing and operating the airspace.

(2) A general statement of the proposed use.

(3) The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out pertinent features in relation to the highway facility.

(4) A detailed three-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits may be furnished in lieu of a three-dimensional description.

(5) Provision that any significant revision in the design or construction of a facility described in subsection 5f(3) above shall receive prior approval by the SHD subject to concurrence by the FHWA.

(6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD subject to concurrence by the FHWA.

(7) Provision that such airspace shall not be transferred, assigned, or conveyed to another party without prior SHD approval subject to concurrence by the FHWA.

(8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

(9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the State upon termination of the agreement.

(10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible

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party for the payment of any damages which may occur during or after construction of the airspace facilities to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency, when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

(11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.

(12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.

(13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances[4] with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(g) Use of air space beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

(h) The proposed use of airspace above the established gradeline of the highway shall not, at any point between two points established 15 feet beyond the two outer edges of the geometric section (highway prism) of the highway, extend below a horizontal plane which is at least 16 feet 4 inches above the gradeline of the highway, or the minimum vertical clearance plus 4 inches as approved by the State, except as necessary for columns, foundations or other support structures. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the SHD, may be considered on an individual basis by the FHWA.

(i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

(j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when the SHD determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the SHD and the FHWA. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramp.

(k) The use of airspace shall not result in either highway or nonhighway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

(l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from nonhighway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways, unless the plans there-

[4]Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

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for contain adequate provisions, acceptable to the SHD and the FHWA, for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

(m) Any airspace facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or nonhighway users. Proposals involving the construction of improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

(n) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely affect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.

(o) The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind therefrom.

(p) On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.

(q) Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the SHD and the FHWA.

(r) Where either the SHD or the FHWA is of the opinion that the proposed use of airspace requires changes in or additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exception to this policy when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund, nor is it intended to conflict with the provisions of volume 7, chapter 7, section 8, of the Federal-Aid Highway Program Manual,[5] relating to joint development of highway corridors and multiple use of roadway properties.

(s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.

(t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

[5] The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

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(u) Approval for the use and occupancy of highway right-of-way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

(1) Parking design or arrangement to assure orderly and functional parking.

(2) Plantings or other screening measures to improve the esthetics and appearance of the area.

(3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

(4) Access for fire protection and fire fighting equipment.

(v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

§ 713.205 Inventory.

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory which shall be available for review by appropriate Federal and State agencies shall include but not be limited to the following items for each authorized use of airspace:

(a) Location by project, survey station, or other appropriate method.

(b) Identification of the authorized user of the airspace.

(c) A three-dimensional description or a metes and bounds description.

(d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.

(e) Pertinent construction plans of the facility authorized to occupy the airspace.

(f) A copy of the executed airspace agreement.

Subpart C—Disposal of Rights-of-Way

§ 713.301 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for disposal of portions of highway rights-of-way no longer needed for highway purposes.

§ 713.302 Applicability.

(a) The provisions of this subpart apply to disposals of rights-of-way where Federal-aid highway funds have participated in either the right-of-way or physical construction costs of a project.

(b) The provisions of this subpart do not apply to the matters covered in part 620, subpart B of this chapter.

(1) Where a section of highway including the right-of-way is abandoned;

(2) Where only changes in access control are involved; and

(3) To relinquishments of highway facilities for continued use for highway purposes.

(c) The provisions of this section do not apply:

(1) Where whole sections of the Interstate System are withdrawn under the provisions of 23 U.S.C. 103(e)(2) and (4), or

(2) Where real property has been acquired for planned highway purposes, but because of environmental concerns, widespread public objections, or other similar considerations, the State highway department (SHD) or other appropriate State authority determines not to construct the planned highway facility.

[39 FR 34651, Sept. 27, 1974, as amended at 40 FR 3767, Jan. 24, 1975; 41 FR 9321, Mar. 4, 1976]

§ 713.303 Definitions.

For purposes of this subpart the following definitions apply:

(a) *Disposal.* The conveyance for uses other than for highways of unneeded portions of highway rights-of-way (in contrast to relinquishment, which is the conveyance of a portion of a highway right-of-way or facility by a State highway department (SHD) to another government agency for highway use).

(b) *Final acceptance.* (1) On Federal-aid construction projects, the date of acceptance of the physical construction by FHWA; and

(2) On Federal-aid right-of-way projects, where there is no Federal-aid construction, the date the FHWA determines to be the date of completion of the acquisition of the right-of-way authorized by FHWA to be acquired for the project.

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§ 713.304 General requirements.

(a) The conveyance may be to any public entity or private party.

(b) When disposal of unneeded portions of highway rights-of-way involve a change in the access control line, provisions of part 620, subpart B of this chapter also apply.

(c) Federal, State and local conservation, recreation, park, or other appropriate agencies shall be afforded the opportunity to acquire by purchase or donation in accordance with the State law, tracts of right-of-way being considered for disposal when there is indication that such tracts have a present or potential use for parks, conservation, recreational or related purposes. The SHD shall notify the appropriate agencies of its intention to dispose of unneeded portions of right-of-way which it considers to have present or potential use for the aforementioned purposes.

(d) Lands or interests therein are not to be disposed of if they are suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the highway.

(e) When right-of-way which has been acquired with Federal-aid participation is disposed of without requiring a credit to Federal funds, the instrument of conveyance shall contain appropriate provisions of "Appendix C" of the State's title VI Civil Rights Assurances[6] with respect to the Civil Rights Act of 1964, and the Department of Transportation Regulations (49 CFR part 21).

[39 FR 34651, Sept. 27, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

§ 713.305 Application for approval.

(a) A SHD shall submit a request to FHWA for prior approval to dispose of highway rights-of-way when the determination that the property is no longer needed for highway purposes occurs after:

(1) Final acceptance of a Federal-aid physical construction project, where Federal funds have participated in the right-of-way and construction costs, or construction costs only; or

(2) Final acceptance of a right-of-way acquisition project where Federal-aid highway funds do not participate in the cost of the physical construction.

(b) The request shall include:

(1) An explanation of why the right-of-way is not needed; and

(2) A plan which identifies the right-of-way proposed for disposition in relation to construction features and to the remaining right-of-way.

§ 713.306 Excess right-of-way resulting from plan changes.

(a) Prior to final acceptance of a project, a portion of the right-of-way authorized by FHWA and acquired by the SHD may become unnecessary for the highway project. The unneeded portion usually results from plan changes. Right-of-way authorized and acquired to a natural boundary, but not incorporated into the right-of-way at the time of final acceptance of the project, is considered to be in the nature of a plan change.

(b) When the plan change results in excess right-of-way, a separate request for prior approval of disposal need not be submitted.

(c) Where credit to Federal funds is required in accordance with § 713.307 and the determination as to the unneeded right-of-way is made prior to final acceptance of the project, the disposal shall be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. However, prior to expiration of the specified time period, the SHD may request and the FHWA may approve an extension of the time. If the property is not sold within the approved time limit, the cost of acquisition of the unneeded portion must be credited to the project if Federal reimbursement has been made therefor.

[6] Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration; 400 7th Street, SW., Washington, DC 20590.

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§ 713.307 Credit to Federal funds.

(a) When right-of-way is disposed of to another governmental agency for public use, FHWA does not require a charge to the agency and no credit to Federal funds is required. If, for any reason, there is a payment to the State for the land transferred and Federal funds participated in the cost of acquisition of the right-of-way, the amount received shall be credited to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way.

(b) If the disposal is to a part other than a Federal, State, or local governmental agency for public use, and Federal funds participated in the cost of acquisition of the right-of-way, there shall be a credit to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way. The amount credited shall be the result of disposal by one of the following means:

(1) Public sale; or

(2) Negotiations based on current appraised fair market value.

(c) When a credit to Federal funds is required, the cost of disposition may be deducted from the sales price.

§ 713.308 Uneconomic remnants.

(a) An uneconomic remnant incorporated within the right-of-way limits loses its identity and becomes part of the right-of-way. Should it no longer be needed for highway purposes, disposal of the area would be in the same manner as any other portion of highway rights-of-way.

(b) When the uneconomic remnant is not incorporated within the approved right-of-way limits, no FHWA approval to dispose of it is required. Upon disposal of such remnant, a credit to Federal funds is required in accordance with the provisions of § 713.307 of this part.

[39 FR 34651, Sept. 27, 1974, as amended at 44 FR 73019, Dec. 17, 1979]

PART 720—APPRAISAL

Subpart A—[Reserved]

Subpart B—The Appraisal Function

Sec.

720.201 Appraisal requirements.
720.202 Appraisal fees, contracts, and agreements.

AUTHORITY: 23 U.S.C. 315; 23 CFR 1.32; 49 CFR 1.48(b) and part 24.

Subpart A—[Reserved]

Subpart B—The Appraisal Function

§ 720.201 Appraisal requirements.

Additional policies and requirements governing the appraisal of property for Federal and federally assisted projects, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR part 24, subpart B.

[50 FR 34093, Aug. 23, 1985, as amended at 54 FR 47076, Nov. 9, 1989]

§ 720.202 Appraisal fees, contracts, and agreements.

(a) *Purpose.* This section prescribes Federal Highway Administration (FHWA) requirements for contracts or agreements between an acquiring agency (a State highway department or other political subdivision of a State) and fee appraisers and specialists on federally assisted highway programs and projects. It also describes the conditions under which Federal funds will participate in the cost of employing fee appraisers and specialists and prescribes criteria for establishing fees for such services.

(b) *Applicability.* (1) Except as provided in paragraph (b)(2) of this section, the provisions of this section are applicable to the employment of fee appraisers and specialists by an acquiring agency for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

(2) The provisions of this section are not applicable to those programs and projects specifically excluded by law, or by agreement with the FHWA.

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(c) *Employment of fee appraisers and specialists.* (1) Federal funds may participate in the cost of employing fee appraisers and specialists to provide cost studies, estimates or appraisals when:

(i) The staff personnel of the acquiring agency is insufficient to perform the work within a reasonable time.

(ii) A fee appraisal or specialist report is needed for use in a condemnation case.

(iii) The unusual character of the work requires the services of a person or persons with highly specialized knowledge and experience not available on the staff of the acquiring agency.

(2) Fee personnel shall be retained directly by the acquiring agency and required, by written contract, to personally perform the services contracted for, except as hereinafter provided. When services of a highly specialized nature are required to assist in the preparation of the appraisal, the employment of specialists should be handled by the acquiring agency. However, in appropriate instances such employment may be accomplished by the contract appraiser responsible for the appraisal of the entire property. If the latter course is followed, the acquiring agency shall reserve to itself the approval of the selection of the specialist by the contract appraiser.

(d) *Fees.* (1) The basis of payment set forth in the agreement covering more than one parcel shall not be computed on an average rate per parcel. The agreement shall itemize the actual amount to be paid per parcel, or such itemization shall be by a separate statement.

(2) In instances where special use or other unusual properties are involved, the division administrator may give prior approval to the use of a per diem rate contracting method with a stated overall limit which should not be exceeded except by supplemental agreement.

(3) Provision shall be made in the agreement for a per diem rate to be paid to the fee appraiser or specialist in the event court appearances or conferences preparatory thereto become necessary. This contingent cost shall be separate and apart from the fee or the overall limit specified in the agreement for completion of the services covered by the agreement.

(4) There shall be no Federal reimbursement for compensation paid by an acquiring agency for revision or correction of a report required by the appraiser's or specialist's failure to comply with contract specifications and standards in the agreement.

(5) There shall be no Federal participation in the appraisal or specialist fee or the amount paid for a parcel where the appraisal or specialist fee is determined as a percentage of the appraised value or assessed value.

(6) The amount of the fee shall represent a fair payment for the services performed whether it be for the initial valuation, a new valuation occasioned by a change in the taking, or a subsequent updating requested by the acquiring agency. In the instance of a new valuation or updating, a flat percentage of the original fee is not acceptable as representative of fair payment. Experience of the acquiring agency and any other available guides should be considered in arriving at an equitable fee. A qualified individual from the acquiring agency's right-of-way organization should visit the project site to identify the valuation problem, determine the number and type of reports needed, and estimate a fee per parcel. The estimate shall be made prior to requesting a proposal from fee personnel and shall be retained in the acquiring agency's file. A predetermined schedule of fees for different types of properties may be utilized provided documentation to support such schedule(s) is available in the acquiring agency's files. In determining the basis of payment and the actual fees to be paid, consideration should be given to:

(i) The complexity of the appraisal or other work to be undertaken and the skills necessary to provide such services.

(ii) The number of parcels included in the assignment.

(iii) The amount of information and data provided fee personnel by the acquiring agency, and the extent of information that must be developed independently.

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(iv) The location and conditions pertinent to the project for which the fee service is to be provided.

(v) The time allowed for performance of the assignment.

(e) *Requirements for contracts and agreements.* Contracts, agreements, or assignment letters for fee appraisal and specialist services shall contain as a minimum the following provisions and clauses:

(1) Date of agreement.

(2) The complete name and address of each party to the agreement whether individual, partnership, firm or corporation. If a corporation is one of the parties, identify the State in which it is incorporated. Where a contract is with a partnership, firm or corporation, the agreement or supplement thereto shall identify the person who will perform the valuation service and, if necessary, testify in a condemnation action.

(3) Federal-aid project number and location.

(4) Description of the work to be done in sufficient detail to show the nature and extent of the services contemplated.

(5) Provision for the appraiser or specialist to testify in court if the need arises.

(6) Specifications as to the content and format of reports.

(7) Data to be furnished by the acquiring agency.

(8) Date completed reports are due.

(9) The basis of payment for the services to be furnished.

(10) The following clause:

The appraiser (specialist) warrants that he has not employed or retained any company, firm or person, other than a bona fide employee working solely for him, to solicit or secure this agreement, and that he has not paid or agreed to pay any company, firm or person, other than a bona fide employee working solely for him, any fee commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the (agency) shall have the right to annul this agreement without liability.

(11) Provisions that would permit the negotiation for mutual acceptance of major changes in the scope, character, or estimated total cost of the work to be performed if such changes become necessary as the work progresses.

(12) Provision that would permit termination of the agreement by the acquiring agency in case the appraiser (specialist) is not complying with the terms of the agreement, the progress or quality of work is unsatisfactory, or for other stated reasons. Provision covering the ownership of work completed or partially completed and basis of payment therefor in the event of termination of the agreement by the acquiring agency.

(13) Provision for a procedure for resolving any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties, conforming to the practice followed by the acquiring agency in resolving disputes in other contractual matters.

(14) An expressed prohibition against the subletting or transfer of any of the work except as is otherwise provided for in the agreement.

(15) Instructions that the appraiser (specialist) is to follow accepted principles and techniques in the valuation of real property in accordance with existing State law.

(16) Provision for itemizing the fee per parcel within the agreement or by a separate statement.

(17) Provision for updating reports at request of the acquiring agency.

(18) Provision for execution of certification statement.

(19) The clauses set forth in appendix A of the Civil Rights Assurances.

(20) Properly executed signature and dates.

[38 FR 31828, Nov. 19, 1973. Redesignated and amended at 50 FR 34093, Aug. 23, 1985]

PART 740—RELOCATION ASSISTANCE

Sec.

740.1 Relocation requirements.
740.2 Eligibility for participation of Federal-aid funds.
740.3 Organization requirements for administration of Relocation Assistance Programs.
740.4 Relocation contract procedures.

AUTHORITY: 23 U.S.C. 315; 23 CFR 1.32; 49 CFR 1.48(b) and part 24.

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§ 740.1 Relocation requirements.

Substantive requirements governing the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs and projects, prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR part 24.

[50 FR 34093, Aug. 23, 1985, as amended at 54 FR 47076, Nov. 9, 1989]

§ 740.2 Eligibility for participation of Federal-aid funds.

(a) *Reimbursement requirements.* Federal funds may participate in relocation payments to eligible persons when all of the following conditions have been met:

(1) *Program approval and authorization.* There has been approval of a Federal-aid program or project and authorization to proceed has been issued. Conceptual stage work may be programed as either preliminary engineering or right-of-way depending upon State procedures.

(2) *Person relocated.* When in fact a person has been or will be relocated by the project or from the right-of-way approved for such project.

(3) *Lawful costs.* When relocation costs are lawfully incurred.

(4) *Costs recorded as liability.* When relocation costs are recognized and recorded as a liability of the State in accounts of the State.

(5) *Project agreement executed.* After the project agreement has been executed for the particular project involved; and

(6) *Federally assisted project.* (i) The project must be a federally assisted project. A project is not considered to be federally assisted unless there is Federal participation in the project at the time Federal participation in relocation assistance costs is requested.

(ii) Relocation assistance may be programed, however, if there are no other Federal funds in the project at the time the State's request is received, provided the State indicates its intention to request the participation of Federal funds in construction or some other phase of that project in the future. If, in such a case, Federal funds do not participate in construction or some other phase of the project, reimbursement by the State for the Federal share of the relocation assistance costs must be made.

(b) *Interest acquired.* The type of interest acquired does not affect the eligibility of relocation costs for reimbursement provided the interest acquired is sufficient, to cause displacement. In like manner, the terms under which a tenant is occupying property do not affect eligibility for Federal participation provided the tenant is actually displaced by the project and the occupancy is lawful.

(c) *Federal share.* (1) The costs of providing relocation payments and services required by this part are eligible for Federal participation in the same manner and to the same extent as other project costs.

(2) Federal funds may not participate in any costs of a project, including preliminary engineering, right-of-way, relocation and construction, costs, unless prior to their displacement from their home, comparable replacement dwellings were available or provided for displaced individuals and families.

(d) *Administrative costs.* Only those costs directly chargeable to the highway project are eligible for Federal participation. The policies and procedures governing reimbursement for employment of public employees on Federal-aid projects are contained in part 140, subpart G.

[41 FR 48682, Nov. 4, 1976; 42 FR 30835, June 17, 1977. Redesignated and amended at 50 FR 34093, Aug. 23, 1985]

§ 740.3 Organization requirements for administration of Relocation Assistance Programs.

State organization and procedures. Each State highway agency shall have an individual whose primary responsibility is the administration of the State's relocation assistance program. There will be assigned to each right-of-way project where relocations will occur one or more individuals whose primary responsibility is to provide relocation assistance. These individuals may have responsibility for more than one project where reasonable.

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[41 FR 48682, Nov. 4, 1976. Redesignated and amended at 50 FR 34093, Aug. 23, 1985]

§ 740.4 Relocation contract procedures.

(a) *Relocation functions performed by another agency.* In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the Federal Highway Administration or a State highway agency may enter into contracts with any individual, firm, association or corporation to provide services and/or payments in connection with such programs, or may carry out its functions under this part through any State agency having an established organization for conducting relocation assistance programs. Any such agency may be used only if it is adequately staffed, equipped, and organized to provide such services and/or payments.

(b) *Contracting procedures.* Where a State highway agency elects to have the relocation services and payments required under this part administered by another Federal, State, local governmental or private agency having an established organization, it shall enter into a written contract or agreement to that effect with the agency it selects. The selection of prime contractors and subcontractors shall be made by the States on a nondiscriminatory basis and in accordance with the requirements in title VI of the Civil Rights Act of 1964 and Executive Order 11246.

(c) *Technical guidance.* Where State employees are directly engaged in project activities or provide technical guidance, consultation, training, or otherwise work directly on specific projects with employees of a political subdivision to accomplish relocation assistance operations or in escalating such project operations to an acceptable level of performance, Federal funds may participate in the costs of such project activity.

(d) *Land acquired in connection with other Federal or Federally-assisted programs*—(1) *Land acquired and displacements made prior to location of highway.* Where land is acquired and all displacements made for a program or projects, other than one in which Federal funds administered by the FHWA are or will be utilized, prior to receipt of written advice from the State highway agency concerning the location of a proposed highway or project or a request for reservation or conveyance for such purposes,

(i) The provisions of this part will not apply, and

(ii) There shall be no FHWA participation in relocation costs.

(2) *Land acquired and/or displacements made subsequent to location of highway.* Where land is acquired and/or displacements are made subsequent to written advice from the State highway agency giving the location of a proposed highway or other project in which Federal funds administered by the FHWA will be utilized or a request is made for reservation or conveyance for such purposes,

(i) The applicable provisions of this part will apply, and

(ii) The costs to the State highway agency of the relocation payments and services required by 49 CFR part 24 will be eligible for the FHWA participation in the same manner and to the same extent as other project costs.

(A) The State highway agency and the displacing agency shall enter into an agreement or memorandum of understanding setting forth the responsibilities of each in the relocations involved and the basis for the sharing of costs. Such agreements should be executed during the early stages of project development and will not jeopardize future Federal participation in costs to the State highway agency of the relocation payments and services if the agreement does not constitute a binding obligation for payment of such costs on specified lands.

(B) The agreement should be in effect when a request for authorization to acquire is submitted to the FHWA and should be coordinated with any agreement to be executed under the provisions of § 710.304(o).

(e) *Surveillance.* The State highway agency shall monitor relocation assistance activities conducted by any State agency, individual, firm, association, or corporation to the extent necessary.

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[41 FR 48682, Nov. 4, 1976. Redesignated and amended at 50 FR 34093, Aug. 23, 1985; 54 FR 47076, Nov. 9, 1989]

PART 750—HIGHWAY BEAUTIFICATION

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SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

Subpart A—National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program

AUTHORITY: Sec. 12, Pub. L. 85-381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

§ 750.101 Purpose.

(a) In section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, hereinafter called the *act*, the Congress declared that:

(1) To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the *Interstate System*, it is in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to such system by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system.

(2) It is a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within 660 feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary of Transportation.

(b) The standards in this part are hereby promulgated as provided in the act.

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[38 FR 16044, June 20, 1973, as amended at 39 FR 28629, Aug. 9, 1974]

§ 750.102 Definitions.

The following terms when used in the standards in this part have the following meanings:

(a) *Acquired for right-of-way* means acquired for right-of-way for any public road by the Federal Government, a State, or a county, city, or other political subdivision of a State, by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of-way purposes under applicable Federal or State law.

(b) *Centerline of the highway* means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a nondivided Interstate Highway.

(c) *Controlled portion of the Interstate System* means any portion which:

(1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956);

(2) Lies within a State, the highway department of which has entered into an agreement with the Secretary of Transportation as provided in the act; and

(3) Is not excluded under the terms of the act which provide that agreements entered into between the Secretary of Transportation and the State highway department shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial.

(d) *Entrance roadway* means any public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an Interstate Highway from the general road system within a State, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

(e) *Erect* means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) *Exit roadway* means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an Interstate Highway to reach the general road system within a State, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(g) *Informational site* means an area or site established and maintained within or adjacent to the right-of-way of a highway on the Interstate System by or under the supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.

(h) *Legible* means capable of being read without visual aid by a person of normal visual acuity.

(i) *Maintain* means to allow to exist.

(j) *Main-traveled way* means the traveled way of an Interstate Highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(k) *Protected areas* means all areas inside the boundaries of a State which are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System within that State. Where a controlled portion of the Interstate System terminates at a State boundary which is not perpendicular or normal to the centerline of the highway, protected areas also means all areas inside the boundary of such

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State which are within 660 feet of the edge of the right-of-way of the Interstate Highway in the adjoining State.

(l) *Scenic area* means any public park or area of particular scenic beauty or historical significance designated by or pursuant to State law as a scenic area.

(m) *Sign* means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System.

(n) *State* means the District of Columbia and any State of the United States within the boundaries of which a portion of the Interstate System is located.

(o) *State law* means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to State constitution or statute.

(p) *Trade name* shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(q) *Traveled way* means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(r) *Turning roadway* means a connecting roadway for traffic turning between two intersection legs of an interchange.

(s) *Visible* means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

§ 750.103 Measurements of distance.

(a) Distance from the edge of a right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

(b) All distances under § 750.107 (a)(2) and (b) shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

[38 FR 16044, June 20, 1973, as amended at 41 FR 9321, Mar. 4, 1976]

§ 750.104 Signs that may not be permitted in protected areas.

Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising activities that are illegal under State or Federal laws or regulations in effect at the location of such signs or at the location of such activities.

(b) Obsolete signs.

(c) Signs that are not clean and in good repair.

(d) Signs that are not securely affixed to a substantial structure, and

(e) Signs that are not consistent with the standards in this part.

§ 750.105 Signs that may be permitted in protected areas.

(a) Erection or maintenance of the following signs may be permitted in protected areas:

Class 1—Official signs. Directional or other official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in State of Federal law, for the purpose of carrying out an official duty or responsibility.

Class 2—On-premise signs. Signs not prohibited by State law which are consistent with the applicable provisions of this section and § 750.108 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

Not more than one such sign advertising the sale or lease of the same property may be permitted under this class in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway.

Not more than one such sign, visible to traffic proceeding in any one direction on any one Interstate Highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this class more than 50 feet from the advertised activity.

Class 3—Signs within 12 miles of advertised activities. Signs not prohibited by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which

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advertise activities being conducted within 12 air miles of such signs.

Class 4—Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which are designed to give information in the specific interest of the traveling public.

(b) A Class 2 or 3 sign, except a Class 2 sign not more than 50 feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than 12 air miles from such sign may not be permitted unless the name of the advertised activity which is within 12 air miles of such sign is displayed as conspicuously as such trade name.

(c) Only information about public places operated by Federal, State, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation and places for camping, lodging, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. For the purposes of the standards in this part, a trade name is deemed to be information in the specific interest of the traveling public only if it identifies or characterizes such a place or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such a place. Signs displaying any other trade name may not be permitted under Class 4.

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.

§ 750.106 Class 3 and 4 signs within informational sites.

(a) Informational sites for the erection and maintenance of Class 3 and 4 advertising and informational signs may be established in accordance with § 1.35 of this chapter. The location and frequency of such sites shall be as determined by agreements between the Secretary of Transportation and the State highway departments.

(b) Class 3 and 4 signs may be permitted within such informational sites in protected areas in a manner consistent with the following provisions:

(1) No sign may be permitted which is not placed upon a panel.

(2) No panel may be permitted to exceed 13 feet in height or 25 feet in length, including border and trim, but excluding supports.

(3) No sign may be permitted to exceed 12 square feet in area, and nothing on such sign may be permitted to be legible from any place on the main-traveled way or a turning roadway.

(4) Not more than one sign concerning a single activity or place may be permitted within any one informational site.

(5) Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign which does not also qualify as a Class 4 sign may be permitted within any informational site more than 12 air miles from the advertised activity.

(6) No sign may be permitted which moves or has any animated or moving parts.

(7) Illumination of panels by other than white lights may not be permitted, and no sign placed on any panel may be permitted to contain, include, or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

(8) No lighting may be permitted to be used in any way in connection with any panel unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

[23 FR 8793, Nov. 13, 1958, as amended at 35 FR 18719, Dec. 10, 1970; 41 FR 9321, Mar. 4, 1976]

§ 750.107 Class 3 and 4 signs outside informational sites.

(a) The erection or maintenance of the following signs may be permitted

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within protected areas, outside informational sites:

(1) Class 3 signs which are visible only to Interstate highway traffic not served by an informational site within 12 air miles of the advertised activity;

(2) Class 4 signs which are more than 12 miles from the nearest panel within an informational site serving Interstate highway traffic to which such signs are visible.

(3) Signs that qualify both as Class 3 and 4 signs may be permitted in accordance with either paragraph (a)(1) or (2) of this section.

(b) The erection or maintenance of signs permitted under paragraph (a) of this section may not be permitted in any manner inconsistent with the following:

(1) In protected areas in advance of an intersection of the main-traveled way of an Interstate highway and an exit roadway, such signs visible to Interstate highway traffic approaching such intersection may not be permitted to exceed the following number:

Distance from intersection	Number of signs
0–2 miles	0.
2–5 miles	6.
More than 5 miles	Average of one sign per mile.

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the Interstate highway.

(2) Subject to the other provisions of this paragraph, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than 1,000 feet apart.

(3) Such signs may not be permitted in protected areas adjacent to any Interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway.

(4) Such signs visible to Interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted in protected areas for 1,000 feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the Interstate highway.

(5) No such signs may be permitted in scenic areas.

(6) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one Interstate highway.

(c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.

§ 750.108 General provisions.

No Class 3 or 4 signs may be permitted to be erected or maintained pursuant to § 750.107, and no Class 2 sign may be permitted to be erected or maintained, in any manner inconsistent with the following:

(a) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

(b) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(c) No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

(d) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(e) No sign may be permitted which moves or has any animated or moving parts.

(f) No sign may be permitted to be erected or maintained upon trees or

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painted or drawn upon rocks or other natural features.

(g) No sign may be permitted to exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim but excluding supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

§ 750.109 Exclusions.

The standards in this part shall not apply to markers, signs and plaques in appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Transportation, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable.

§ 750.110 State regulations.

A State may elect to prohibit signs permissible under the standards in this part without forfeiting its rights to any benefits provided for in the act.

Subpart B—National Standards for Directional and Official Signs

AUTHORITY: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

§ 750.151 Purpose.

(a) In section 131 of title 23 U.S.C., Congress has declared that:

(1) The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote safety and recreational value of public travel, and to preserve natural beauty.

(2) Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, shall conform to national standards authorized to be promulgated by the Secretary, which standards shall contain provisions concerning the lighting, size, number and spacing of signs, and such other requirements as may be appropriate to implement the section.

(b) The standards in this part are issued as provided in section 131 of title 23 U.S.C.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

§ 750.152 Application.

The following standards apply to directional and official signs and notices located within six hundred and sixty (660) feet of the right-of-way of the Interstate and Federal-aid primary systems and to those located beyond six hundred and sixty (660) feet of the right-of-way of such systems, outside of urban areas, visible from the main traveled way of such systems and erected with the purpose of their message being read from such main traveled way. These standards do not apply to directional and official signs erected on the highway right-of-way.

[40 FR 21934, May 20, 1975]

§ 750.153 Definitions.

For the purpose of this part:

(a) *Sign* means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

(b) *Main traveled way* means the through traffic lanes of the highway, exclusive of frontage roads, auxiliary lanes, and ramps.

(c) *Interstate System* means the National System of Interstate and Defence Highways described in section 103(d) of title 23 U.S.C.

(d) *Primary system* means the Federal-aid highway system described in section 103(b) of title 23 U.S.C.

(e) *Erect* means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) *Maintain* means to allow to exist.

(g) *Scenic area* means any area of particular scenic beauty or historical significance as determined by the Fed-

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eral, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

(h) *Parkland* means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(i) *Federal or State law* means a Federal or State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State or Federal agency or a political subdivision of a State pursuant to a Federal or State constitution or statute.

(j) *Visible* means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(k) *Freeway* means a divided arterial highway for through traffic with full control of access.

(l) *Rest area* means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

(m) *Directional and official signs and notices* includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(n) *Official signs and notices* means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

(o) *Public utility signs* means warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

(p) *Service club and religious notices* means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

(q) *Public service signs* means signs located on school bus stop shelters, which signs:

(1) Identify the donor, sponsor, or contributor of said shelters;

(2) Contain public service messages, which shall occupy not less than 50 percent of the area of the sign;

(3) Contain no other message;

(4) Are located on schoolbus shelters which are authorized or approved by city, county, or State law, regulation, or ordinance, and at places approved by the city, county, or State agency controlling the highway involved; and

(5) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(r) *Directional signs* means signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(s) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

(t) *Urban area* means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

§ 750.154 Standards for directional signs.

The following apply only to directional signs:

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(a) *General.* The following signs are prohibited:

(1) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have any animated or moving parts.

(7) Signs located in rest areas, parklands or scenic areas.

(b) *Size.* (1) No sign shall exceed the following limits:

(i) Maximum area—150 square feet.

(ii) Maximum height—20 feet.

(iii) Maximum length—20 feet.

(2) All dimensions include border and trim, but exclude supports.

(c) *Lighting.* Signs may be illuminated, subject to the following:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(3) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(d) *Spacing.* (1) Each location of a directional sign must be approved by the State highway department.

(2) No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(3) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(4)(i) No two directional signs facing the same direction of travel shall be spaced less than 1 mile apart;

(ii) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(iii) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(iv) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) *Message content.* The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

(f) *Selection method and criteria.* (1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.

(2) To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

(3) Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. A statement as to selection methods and criteria shall be furnished to the Secretary of Transportation before the State permits the erection of any such signs under section 131(c) of title 23 U.S.C., and this part.

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§ 750.155 State standards.

This part does not prohibit a State from establishing and maintaining standards which are more restrictive with respect to directional and official signs and notices along the Federal-aid highway systems than these national standards.

[38 FR 16044, June 20, 1973, as amended at 40 FR 21934, May 20, 1975]

Subpart C—[Reserved]

Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

SOURCE: 39 FR 27436, July 29, 1974, unless otherwise noted.

§ 750.301 Purpose.

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).

§ 750.302 Policy.

(a) Just compensation shall be paid for the rights and interests of the sign and site owner in those outdoor advertising signs, displays, or devices which are lawfully existing under State law, in conformance with the terms of 23 U.S.C. 131.

(b)(1) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental costs legally incurred or obligated by the State.

(2) Federal funds will participate in 100 percent of the costs of removal of those signs which were removed prior to January 4, 1975, by relocation, pursuant to the provisions of 23 CFR § 750.305(a)(2), and which are required to be removed as a result of the amendments made to 23 U.S.C. 131 by the Federal-Aid Highway Amendments of 1974, Pub. L. 93-643, section 109, January 4, 1975. Such signs must have been relocated to a legal site, must have been legally maintained since the relocation, and must not have been substantially changed, as defined by the State maintenance standards, issued pursuant to 23 CFR 750.707(b).

(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, *et seq.*) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.

(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.303 Definitions.

(a) *Sign.* An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(b) *Lease (license, permit, agreement, contract or easement).* An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to another person for a specified purpose.

(c) *Leasehold value.* The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.

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(d) *Illegal sign.* One which was erected and/or maintained in violation of State law.

(e) *Nonconforming sign.* One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(f) *1966 inventory.* The record of the survey of advertising signs and junkyards compiled by the State highway department.

(g) *Abandoned sign.* One in which no one has an interest, or as defined by State law.

§ 750.304 State policies and procedures.

The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:

(a) *Project priorities.* The following order of priorities is recommended.

(1) Illegal and abandoned signs.

(2) Hardship situations.

(3) Nominal value signs.

(4) Signs in areas which have been designated as scenic under authority of State law.

(5) Product advertising on:

(i) Rural interstate highway.

(ii) Rural primary highway.

(iii) Urban areas.

(6) Nontourist-oriented directional advertising.

(7) Tourist-oriented directional advertising.

(b) *Programing.* (1) A sign removal project may consist of any group of proposed sign removals. The signs may be those belonging to one company or those located along a single route, all of the signs in a single county or other locality, hardship situations, individually or grouped, such as those involving vandalized signs, or all of a sign owner's signs in a given State or area, or any similar grouping.

(2) A project for sign removal on other than a Federal-aid primary route basis e.g., a countywide project or a project involving only signs owned by one company, should be identified as CAF-000B( ), continuing the numbering sequence which began with the sign inventory project in 1966.

(3) Where it would not interfere with the State's operations, the State should program sign removal projects to minimize disruption of business.

(c) *Valuation and review methods—*(1) *Schedules—formulas.* Schedules, formulas or other methods to simplify valuation of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of just compensation under eminent domain.

(2) *Appraisals.* Where appropriate, the State may use its approved appraisal report forms including those for abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.

(3) *Leaseholds.* When outdoor advertising signs and sign sites involve a leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.

(4) *Severance damages.* The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.304(h), and the law of the State before Federal participation will be allowed. Generally, Federal participation will not be allowed in the payment of severance

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damages to remaining signs, or other property of a sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.

(ii) A plan or map showing the location of each sign.

(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other authorities supporting the State's position.

(5) *Review of value estimates.* All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.

(d) *Nominal value plan.* (1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to $250 for each nonconforming sign, and up to $100 for each nonconforming sign site.

(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.

(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest acquired, and removal rights.

(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.

(5) Programing and authorizations will be in accord with § 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programed and authorized as one project.

(e) *Sign removal.* The State's procedural statement should include provision for:

(1) Owner retention.

(2) Salvage value.

(3) State removal.

[39 FR 27436, July 29, 1974; 42 FR 30835, June 17, 1977, as amended at 50 FR 34093, Aug. 23, 1985]

§ 750.305 Federal participation.

(a) Federal funds may participate in:

(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.

(2) The cost of relocating a sign to the extent of the cost to acquire the sign, less salvage value if any.

(3) A duplicate payment for the site owner's interest of $2,500 or less because of a bona fide error in ownership, provided the State has followed its title search procedures as set forth in its policy and procedure submission.

(4) The cost of removal of signs, partially completed sign structures, sup-

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porting poles, abandoned signs and those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal force account and contractual reimbursement procedures. The State should maintain a record of the number of signs removed. These data should be retained in project records and reported on the periodic report required under § 750.308 of this regulation.

(5) Signs materially damaged by vandals. Federal funds shall be limited to the Federal pro-rata share of the fair market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and reerecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.

(6) The cost of acquiring and removing completed sign structures which have been blank or painted out beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his nonconforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable for establishing or showing that the nonconforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.

(7) In the event a sign was omitted in the 1966 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1965, the costs are eligible for Federal participation.

(b) Federal funds may not participate in:

(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is $2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some lesser evidence or proof of title such as searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.

(2) Payments to a sign owner where the sign was erected without permission of the property owner unless the sign owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State personnel on a force account basis or by contract with Federal participation except where the sign owner reimburses the State for removal.

(3) Acquisition costs paid for abandoned or illegal signs, potential sign sites, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or illegally erected by a sign owner.

(4) The acquisition cost of supporting poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When the State has determined the sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.

§ 750.306 Documentation for Federal participation.

The following information concerning each sign must be available in the State's files to be eligible for Federal participation.

(a) *Payment to sign owner.* (1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs

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need be provided to document the type and condition of the signs.

(2) Evidence showing the sign was nonconforming as of the date of taking.

(3) Value documentation and proof of obligation of funds.

(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).

(5) Evidence that the sign falls within one of the three categories shown in § 750.302 of this regulation. The specific category should be identified.

(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.

(b) *Payment to the site owner.* (1) Evidence that an agreement has been reached between the State and owner.

(2) Value documentation and proof of obligation of funds.

(3) Satisfactory indication of ownership or compensable interest.

(c) In those cases where Federal funds participate in 100 percent of the cost of removal, the State file shall contain the records of the relocation made prior to January 4, 1975.

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.307 FHWA project approval.

Authorization to proceed with acquisitions on a sign removal project shall not be issued until such time as the State has submitted to FHWA the following:

(a) A general description of the project.

(b) The total number of signs to be acquired.

(c) The total estimated cost of the sign removal project, including a breakdown of incidental, acquisition and removal costs.

§ 750.308 Reports.

Periodic reports on site acquisitions and actual sign removals shall be submitted on FHWA Form 1424 and as prescribed.[1]

[39 FR 27436, July 29, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

Subpart E—Signs Exempt From Removal in Defined Areas

AUTHORITY: 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

SOURCE: 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

§ 750.501 Purpose.

This subpart sets forth the procedures pursuant to which a State may, if it desires, seek an exemption from the acquisition requirements of 23 U.S.C. 131 for signs giving directional information about goods and services in the interest of the traveling public in defined areas which would suffer substantial economic hardship if such signs were removed. This exemption may be granted pursuant to the provisions of 23 U.S.C. 131(o).

§ 750.502 Applicability.

The provisions of this subpart apply to signs adjacent to the Interstate and primary systems which are required to be controlled under 23 U.S.C. 131.

§ 750.503 Exemptions.

(a) The Federal Highway Administration (FHWA) may approve a State's request to exempt certain nonconforming signs, displays, and devices (hereinafter called signs) within a defined area from being acquired under the provisions of 23 U.S.C. 131 upon a showing that removal would work a substantial economic hardship throughout that area. A defined area is an area with clearly established geographical boundaries defined by the State which the State can evaluate as an economic entity. Neither the States nor FHWA shall rely on individual claims of economic hardship. Exempted signs must:

(1) Have been lawfully erected prior to May 5, 1976, and must continue to be lawfully maintained.

[1] Forms are available at FHWA Division Offices located in each State.

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(2) Continue to provide the directional information to goods and services offered at the same enterprise in the defined area in the interest of the traveling public that was provided on May 5, 1976. Repair and maintenance of these signs shall conform with the State's approved maintenance standards as required by subpart G of this part.

(b) To obtain the exemption permitted by 23 U.S.C. 131(o), the State shall establish:

(1) Its requirements for the directional content of signs to qualify the signs as directional signs to goods and services in the defined area.

(2) A method of economic analysis clearly showing that the removal of signs would work a substantial economic hardship throughout the defined area.

(c) In support of its request for exemption, the State shall submit to the FHWA:

(1) Its requirements and method (see § 750.503(b)).

(2) The limits of the defined area(s) requested for exemption, a listing of signs to be exempted, their location, and the name of the enterprise advertised on May 5, 1976.

(3) The application of the requirements and method to the defined areas, demonstrating that the signs provide directional information to goods and services of interest to the traveling public in the defined area, and that removal would work a substantial economic hardship in the defined area(s).

(4) A statement that signs in the defined area(s) not meeting the exemption requirements will be removed in accordance with State law.

(5) A statement that the defined area will be reviewed and evaluated at least every three (3) years to determine if an exemption is still warranted.

(d) The FHWA, upon receipt of a State's request for exemption, shall prior to approval:

(1) Review the State's requirements and methods for compliance with the provisions of 23 U.S.C. 131 and this subpart.

(2) Review the State's request and the proposed exempted area for compliance with State requirements and methods.

(e) Nothing herein shall prohibit the State from acquiring signs in the defined area at the request of the sign owner.

(f) Nothing herein shall prohibit the State from imposing or maintaining stricter requirements.

Subpart F—[Reserved]

Subpart G—Outdoor Advertising Control

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

SOURCE: 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

§ 750.701 Purpose.

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent outdoor advertising control requirements along Interstate and Primary Systems than provided herein.

§ 750.702 Applicability.

The provisions of this subpart are applicable to all areas adjacent to the Federal-aid Interstate and Primary Systems, including toll sections thereof, except that within urban areas, these provisions apply only within 660 feet of the nearest edge of the right-of-way. These provisions apply regardless of whether Federal funds participated in the costs of such highways. The provisions of this subpart do not apply to the Federal-aid Secondary or Urban Highway System.

§ 750.703 Definitions.

The terms as used in this subpart are defined as follows:

(a) *Commercial and industrial zones* are those districts established by the

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zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

(b) *Erect* means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(c) *Federal-aid Primary Highway* means any highway on the system designated pursuant to 23 U.S.C. 103(b).

(d) *Interstate Highway* means any highway on the system defined in and designated, pursuant to 23 U.S.C. 103(e).

(e) *Illegal sign* means one which was erected or maintained in violation of State law or local law or ordinance.

(f) *Lease* means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a specified purpose, and which is a valid contract under the laws of a State.

(g) *Maintain* means to allow to exist.

(h) *Main-traveled way* means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(i) *Sign, display or device*, hereinafter referred to as "sign," means an outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(j) *State law* means a State constitutional provision or statute, or an ordinance, rule or regulation, enacted or adopted by a State.

(k) *Unzoned area* means an area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

(l) *Unzoned commercial or industrial areas* are unzoned areas actually used for commercial or industrial purposes as defined in the agreements made between the Secretary, U.S. Department of Transportation (Secretary), and each State pursuant to 23 U.S.C. 131(d).

(m) *Urban area* is as defined in 23 U.S.C. 101(a).

(n) *Visible* means capable of being seen, wehter or not readable, without visual aid by a person of normal visual acuity.

§ 750.704 Statutory requirements.

(a) 23 U.S.C. 131 provides that signs adjacent to the Interstate and Federal-aid Primary Systems which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

(1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in subpart B, part 750, chapter I, 23 CFR, National Standards for Directional and Official Signs;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under the authority of State law;

(5) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary; and

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(6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in § 750.704(a) (4) and (5) must comply with size, lighting, and spacing requirements, to be determined by agreement between the State and the Secretary.

(c) 23 U.S.C. 131 does not permit signs to be located within zoned or unzoned commercial or industrial areas beyond 660 feet of the right-of-way adjacent to the Interstate or Federal-aid Primary System, outside of urban areas.

(d) 23 U.S.C. 131 provides that signs not permitted under § 750.704 of this regulation must be removed by the State.

§ 750.705 Effective control.

In order to provide effective control of outdoor advertising, the State must:

(a) Prohibit the erection of new signs other than those which fall under § 750.704(a)(1) through (6);

(b) Assure that signs erected under § 750.704(a)(4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State;

(c) Assure that signs erected under § 750.704(a)(1) comply with the national standards contained in subpart B, part 750, chapter I, 23 CFR;

(d) Remove illegal signs expeditiously;

(e) Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (subpart D, part 750, chapter I, 23 CFR, sets forth policies for the acquisition and compensation for such signs);

(f) Assure that signs erected under § 750.704(a)(6) comply with § 750.710, Landmark Signs, if landmark signs are allowed;

(g) Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an Interstate or primary highway, except where State law makes such criteria unnecessary. Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled highway, the more stringent of applicable control requirements will apply;

(h) Develop laws, regulations, and procedures to accomplish the requirements of this subpart;

(i) Establish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal; and

(j) Submit regulations and enforcement procedures to FHWA for approval.

[40 FR 42844, Sept. 16, 1975; 40 FR 49777, Oct. 24, 1975]

§ 750.706 Sign control in zoned and unzoned commercial and industrial areas.

The following requirements apply to signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way adjacent to the Interstate and Federal-aid primary highways.

(a) The State by law or regulation shall, in conformity with its agreement with the Secretary, set criteria for size, lighting, and spacing of outdoor advertising signs located in commercial or industrial zoned or unzoned areas, as defined in the agreement, adjacent to Interstate and Federal-aid primary highways. If the agreement between the Secretary and the State includes a grandfather clause, the criteria for size, lighting, and spacing will govern only those signs erected subsequent to the date specified in the agreement. The States may adopt more restrictive criteria than are presently contained in agreements with the Secretary.

(b) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes must limit multiple sign structures to signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest point in the case of back-to-back or "V" type signs.

(c) Where the agreement and State law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing

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controls set forth in the agreement, subject to the following:

(1) The local zoning authority's controls must include the regulation of size, of lighting and of spacing of outdoor advertising signs, in all commercial and industrial zones.

(2) The regulations established by local zoning authority may be either more restrictive or less restrictive than the criteria contained in the agreement, unless State law or regulations require equivalent or more restrictive local controls.

(3) If the zoning authority has been delegated, extraterritorial, jurisdiction under State law, and exercises control of outdoor advertising in commercial and industrial zones within this extraterritorial jurisdiction, control by the zoning authority may be accepted in lieu of agreement controls in such areas.

(4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

§ 750.707 Nonconforming signs.

(a) *General.* The provisions of § 750.707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest edge of the right-of-way which come under the so-called grandfather clause contained in State-Federal agreements. These provisions do not apply to conforming signs regardless of when or where they are erected.

(b) *Nonconforming signs.* A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become noncommercial, or signs lawfully erected on a secondary highway later classified as a primary highway.

(c) *Grandfather clause.* At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfather clause, which do not comply with the agreement criteria have the status of nonconforming signs.

(d) *Maintenance and continuance.* In order to maintain and continue a nonconforming sign, the following conditions apply:

(1) The sign must have been actually in existence at the time the applicable State law or regulations became effective as distinguished from a contemplated use such as a lease or agreement with the property owner. There are two exceptions to actual existence as follows:

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner acted in good faith and expended sums in reliance thereon. This exception shall not apply in instances where large numbers of permits were applied for and issued to a single sign owner, obviously in anticipation of the passage of a State control law.

(ii) Where the State outdoor advertising control law or the Federal-State agreement provides that signs in commercial and industrial areas may be

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erected within six (6) months after the effective date of the law or agreement provided a lease dated prior to such effective date was filed with the State and recorded within thirty (30) days following such effective date.

(2) There must be existing property rights in the sign affected by the State law or regulations. For example, paper signs nailed to trees, abandoned signs and the like are not protected.

(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

(4) The sign must have been lawful on the effective date of the State law or regulations, and must continue to be lawfully maintained.

(5) The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

(6) The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.

(i) Each state shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

(ii) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

(e) *Just compensation.* The States are required to pay just compensation for the removal of nonconforming lawfully existing signs in accordance with the terms of 23 U.S.C. 131 and the provisions of subpart D, part 750, chapter I, 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.

§ 750.708 Acceptance of state zoning.

(a) 23 U.S.C. 131(d) provide that signs "may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides, "The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone, the definition of an unzoned commercial or industrial area in the

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State-Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

§ 750.709 On-property or on-premise advertising.

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (subpart A, part 750, chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same property as the activity or property advertised; and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity located on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

§ 750.710 Landmark signs.

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

§ 750.711 Structures which have never displayed advertising material.

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

§ 750.712 Reclassification of signs.

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to nonconforming and subject to removal under revised State statutes or regulations and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

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§ 750.713 Bonus provisions.

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 30, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.

PART 751—JUNKYARD CONTROL AND ACQUISITION

Sec.
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AUTHORITY: 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

§ 751.1 Purpose.

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein.

[40 FR 12260, Mar. 18, 1975]

§ 751.3 Applicability.

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such highways. This part does not apply to the Urban System.

§ 751.5 Policy.

In carrying out the purposes of this part:

(a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);

(b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and

(c) Nonconforming junkyards should be relocated only as a last resort.

§ 751.7 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Junkyard.* (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

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(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) *Junk.* Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) *Main traveled way.* The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(d) *Industrial zones.* Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of part 750, subpart G of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

(e) *Unzoned industrial areas.* An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

§ 751.9 Effective control.

(a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:

(1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.

(2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136(j).

(3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a)(1) of this section.

(4) Expeditiously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a)(1) of this section.

(b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

(c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

§ 751.11 Nonconforming junkyards.

Subject to the provisions of § 751.9 of this part, the following requirements for the maintenance and continuance of a nonconforming junkyard apply:

(a) The junkyard must have been actually in existence at the time the State law or regulations became effec-

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tive as distinguished from a contemplated use, except where a permit or similar specific State governmental action was granted for the establishment of a junkyard prior to the effective date of the State law or regulations, and the junkyard owner acted in good faith and expended sums in reliance thereon.

(b) There must be existing property rights in the junkyard or junk affected by the State law or regulation. Abandoned junk and junkyards, worthless junk, and the like are not similarly protected.

(c) If the location of a nonconforming junkyard is changed as a result of a right-of-way taking or for any other reason, it ceases to be a nonconforming junkyard, and shall be treated as a new junkyard at a new location.

(d) The nonconforming junkyard must have been lawful on the effective date of the State law or regulations and must continue to be lawfully maintained.

(e) The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard.

(f) The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms.

§ 751.13 Control measures.

(a) Consistent with the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), recycling of junk and scrap is to be encouraged to the greatest extent practicable in the implementation of the junkyard control program. Recycling should be considered in conjunction with other control measures. To facilitate recycling, junk or scrap should be moved to an automobile wrecker, or a scrap processor, or put to some other useful purpose.

(b) Every effort shall be made to screen where the junkyard is to continue as an ongoing business. Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site.

(c) Where screening is used, it must, upon completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings. Each State shall establish criteria governing the location, design, construction, maintenance, and materials used in fencing or screening.

(d) A junkyard should be relocated only when other control measures are not feasible. Junkyards should be relocated to a site not visible from the highway or to an industrial area, and should not be relocated to residential, commercial, or other areas where foreseeable environmental problems may develop.

(e) The State may develop and use other methods of operation to carry out the purposes of this directive, subject to prior FHWA approval.

§ 751.15 Just compensation.

(a) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law, which are required to be removed, relocated, or disposed of pursuant to 23 U.S.C. 136.

(b) No rights to compensation accrue until a taking or removal has occurred. The conditions which establish a right to maintain and continue a nonconforming junkyard as provided in § 751.11 must pertain at the time of the taking or removal in order to establish a right to just compensation.

§ 751.17 Federal participation.

(a) Federal funds may participate in 75 percent of the costs of control measures incurred in carrying out the provisions of this part including necessary studies for particular projects, and the employment of fee landscape architects and other qualified consultants.

(b) Where State control standards are more stringent than Federal control requirements along Interstate and primary highways, the FHWA may approve Federal participation in the

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costs of applying the State standards on a statewide basis. Where State standards require control of junkyards in zoned or unzoned industrial areas, Federal funds may participate only if such action will make an effective contribution to the character of the area as a whole and the cost is reasonable, but such projects should be deferred until the work in the areas where control is required has progressed well toward completion.

(c) Generally, only costs associated with the acquisition of minimal real property interests, such as easements or temporary rights of entry, necessary to accomplish the purposes of this part are eligible for Federal participation. The State may request, on a case-by-case basis, participation in costs of other interests beyond the minimum necessary, including fee title.

(d) Federal funds may participate in costs to correct the inadequacies of screening in prior control projects where the inadequacy is due to higher screening standards established in this part or due to changed conditions.

(e) Federal funds may participate in the costs of moving junk or scrap to a recycling place of business, or in the case of junk with little or no recycling potential, to a site for permanent disposal. In the latter case, reasonable land rehabilitation costs or fees connected with the use of such a disposal site are also eligible. In a case where the acquisition of a permanent disposal site by the State would be the most economical method of disposal, Federal funds may participate in the net cost (cost of acquisition less a credit after disposal) of a site obtained for this purpose.

(f) Federal funds may participate in control measure costs involved in any junkyard lawfully established or maintained under State law which is reclassified from conforming to nonconforming under revised State regulations and policy pursuant to this part.

(g) Federal funds may participate in the costs of acquisition of a dwelling in exceptional cases where such acquisition is found necessary and in the public interest, and where acquisition of the dwelling can be accomplished without resort to eminent domain.

(h) Federal funds shall not participate in:

(1) Costs associated with the control of illegal junkyards except for removal by State personnel on a force account basis or by contract, or in costs of controlling junkyards established after the effective date of the State's compliance law except where a conforming junkyard later becomes nonconforming due to changed conditions;

(2) Any costs associated with the acquisition of any dwelling or its related buildings if acquired through eminent domain in connection with the junkyard control program;

(3) Costs of acquisition of interests or rights as a measure for prohibition or control of the establishment of future junkyards;

(4) Costs of maintaining screening devices after they have been erected; or

(5) Costs of screening junk which has been or will be removed as a part of a junkyard control project.

§ 751.19 Documentation for Federal participation.

The following information concerning each eligible junkyard must be available in the States' files to be eligible for Federal participation in the costs thereof:

(a) Satisfactory evidence of ownership of the junk or junkyard or both.

(b) Value or cost documentation (including separate interests if applicable) including proof of obligation or payment of funds.

(c) Evidence that the necessary property interests have passed to the State and that the junk has been screened, relocated, removed or disposed of in accordance with the provisions of this part.

(d) If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

[40 FR 8551, Feb. 28, 1975; 40 FR 12260, Mar. 18, 1975]

§ 751.21 Relocation assistance.

Relocation assistance benefits pursuant to 49 CFR part 24 are available for:

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(a) The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property and actual reasonable expenses in searching for a replacement business or, if the eligibility requirements are met, a payment in lieu of such expenses.

(b) Relocation assistance in locating a replacement business.

(c) Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.

(d) Replacement housing payments if the acquisition of the dwelling is found by FHWA to be necessary for the federally assisted junkyard control project.

[40 FR 8551, Feb. 28, 1975, as amended at 50 FR 34094, Aug. 23, 1985; 54 FR 47076, Nov. 9, 1989]

§ 751.23 Concurrent junkyard control and right-of-way projects.

The State is encouraged to coordinate junkyard control and highway right-of-way projects. Expenses incurred in furtherance of concurrent projects shall be prorated between projects.

§ 751.25 Programming and authorization.

(a) Junkyard control projects shall be programmed in accordance with the provisions of part 630, subpart A of this chapter. Such projects may include one or more junkyards.

(b) Authorization to proceed with a junkyard control project may be given when the State submits a written request to FHWA which includes the following:

(1) The zoning and validation of the legal status of each junkyard on the project;

(2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;

(3) The real property interest to be acquired in order to implement the control measures;

(4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and

(5) Where screening is to be utilized, the type of screening, and adequately detailed plans and cross sections, or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

PART 752—LANDSCAPE AND ROADSIDE DEVELOPMENT

Sec.

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AUTHORITY: 23 U.S.C. 131, 315, 319; 42 U.S.C. 4321 *et seq.*; 49 CFR 1.48(b), unless otherwise noted.

SOURCE: 43 FR 19390, May 5, 1978, unless otherwise noted.

§ 752.1 Purpose.

The purpose of this part is to furnish guidelines and prescribe policies regarding landscaping and scenic enhancement programs, safety rest areas, and scenic overlooks under 23 U.S.C. 319; information centers and systems under 23 U.S.C. 131(i); and vending machines in safety rest areas under 23 U.S.C. 111.

[48 FR 38610, Aug. 25, 1983]

§ 752.2 Policy.

(a) Highway esthetics is a most important consideration in the Federal-aid highway program. Highways must not only blend with our natural social, and cultural environment, but also provide pleasure and satisfaction in their use.

(b) The FHWA will cooperate with State and local agencies and organiza-

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tions to provide opportunities for the display of original works of art within the highway rights-of-way.

(c) The development of the roadside to include landscape development, safety rest areas, and the preservation of valuable adjacent scenic lands is a necessary component of highway development. Planning and development of the roadside should be concurrent with or closely follow that of the highway. Further, the development of travel information centers and systems is encouraged as an effective method of providing necessary information to the traveling public.

§ 752.3 Definitions.

(a) *Safety rest area.* A roadside facility safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for his rest, relaxation, comfort and information needs. The term is synonymous with "rest and recreation areas."

(b) *Scenic overlook.* A roadside improvement for parking and other facilities to provide the motorist with a safe opportunity to stop and enjoy a view.

(c) *Information centers.* Facilities located at safety rest areas which provide information of interest to the traveling public.

(d) *Information systems.* Facilities located within the right-of-way which provide information of interest to the traveling public. An information system is not a sign, display or device otherwise permitted under 23 U.S.C. 131 or prohibited by any local, State or Federal law or regulation.

(e) *Landscape project.* Any action taken as part of a highway construction project or as a separate action to enhance the esthetics of a highway through the placement of plant materials consistent with a landscape design plan. Seeding undertaken for erosion control and planting vegetation for screening purposes shall not constitute a landscaping project.

[43 FR 19390, May 5, 1978, as amended at 52 FR 34638, Sept. 14, 1987]

§ 752.4 Landscape development.

(a) Landscape development, *which includes landscaping projects and other highway planting programs* within the right-of-way of all federally funded highways or on adjoining scenic lands, shall be in general comformity with accepted concepts and principles of highway landscaping and environmental design.

(b) *Landscape development* should have provisions for plant establishment periods of a duration sufficient for expected survival in the highway environment. Normal 1-year plant establishment periods may be extended to 3-year periods where survival is considered essential to their function, such as junkyard screening or urban landscaping projects.

(c) In urban areas new and major reconstructed highways and completed Interstate and expressway sections are to be landscaped as appropriate for the adjacent existing or planned environment.

(d) In rural areas new and major reconstructed highways should be landscaped as appropriate for the adjacent environment. Planning should include the opportunity for natural regeneration of native growth and the management of that growth.

(e) Landscaping projects shall include the planting of native wildflower seeds or seedlings or both, unless a waiver is granted as provided in § 752.11(b).

[43 FR 19390, May 5, 1978, as amended at 52 FR 34638, Sept. 14, 1987]

§ 752.5 Safety rest areas.

(a) Safety rest areas should provide facilities reasonably necessary for the comfort, convenience, relaxation, and information needs of the motorist. Caretakers' quarters may be provided in conjunction with a safety rest area at such locations where accommodations are deemed necessary. All facilities within the rest area are to provide full consideration and accommodation for the handicapped.

(b) The State may permit the placement of vending machines in existing or new safety rest areas located on the rights-of-way of the Interstate system for the purpose of dispensing such food, drink, or other articles as the State determines are appropriate and desirable, except that the dispensing by any means, of petroleum products

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or motor vehicle replacement parts shall not be allowed. Such vending machines shall be operated by the State.

(c) The State may operate the vending machines directly or may contract with a vendor for the installation, operation, and maintenance of the vending machines. In permitting the placement of vending machines the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Randolph-Sheppard Act, U.S.C. 107(a)(5).

(d) Access from the safety rest areas to adjacent publicly owned conservation and recreation areas may be permitted if access to these areas is only available through the rest area and if these areas or their usage does not adversely affect the facilities of the safety rest area.

(e) The scenic quality of the site, its accessibility and adaptability, and the availability of utilities are the prime considerations in the selection of rest area sites. A statewide safety rest area system plan should be maintained. This plan should include development priorities to ensure safety rest areas will be constructed first at locations most needed by the motorist. Proposals for safety rest areas or similar facilities on Federal-aid highways in suburban or urban areas shall be special case and must be fully justified before being authorized by the FHWA Regional Administrator.

(f) Facilities within newly constructed safety rest areas should meet the forecast needs of the design year. Expansion and modernization of older existing rest areas that do not provide adequate service should be considered.

(g) No charge to the public may be made for goods and services at safety rest areas except for telephone and articles dispensed by vending machines.

[43 FR 19390, May 5, 1978, as amended at 48 FR 38611, Aug. 25, 1983]

§ 752.6 Scenic overlooks.

Scenic overlooks shall be located and designed as appropriate to the site and the scenic view with consideration for safety, access, and convenience of the motorist. Scenic overlooks may provide facilities equivalent to those provided in safety rest area.

§ 752.7 Information centers and systems.

(a) The State may establish at existing or new safety rest areas information centers for the purpose of providing specific information to the motorist as to services, as to places of interest within the State and such other information as the State may consider desirable.

(b) The State may construct and operate the facilities, may construct and lease the operation of information facilities, or may lease the construction and operation of information facilities.

(c) Where the information center or system includes an enclosed building, the identification of the operator and all advertising must be restricted to the interior of the building. Where a facility is in the nature of a bulletin board or partial enclosure, none of the advertising, including the trade name, logo, or symbol of the operator shall be legible from the main traveled way.

(d) Subject to FHWA approval, States may establish or permit information systems within the right-of-way of federally funded highways which provide information of specific interest to the traveling public which do not visually intrude upon the main-traveled way of the highway in a manner violating 23 U.S.C. 131 and other applicable local, State, and Federal laws, rules, and regulations.

§ 752.8 Privately operated information centers and systems.

(a) Subject to the FHWA Regional Administrator's approval of the lease or agreement, the State may permit privately operated information centers and systems which conform with the standards of this directive.

(b) There shall be no violation of control of access, and no adverse effect on traffic in the main traveled way.

(c) The agreement between the State and the private operator shall provide that:

(1) The State shall have title to the information center or system upon completion of construction or termination of the lease.

(2) Advertising must be limited to matters relating to and of interest to the traveling public.

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(3) Equal access must be provided at reasonable rates to all advertisers considered qualified by the State.

(4) Forty percent or more of all display areas and audible communications shall be devoted free of charge to providing information to the traveling public and public service announcements.

(5) No charge to the public may be made for goods or services except telephone and articles dispensed by vending machines.

(6) Nondiscrimination provisions must be included in accordance with the State assurance with regard to 42 U.S.C. 2000d—2000d-5 (Civil Rights Act of 1964). The private operator may not permit advertising from advertisers who do not provide their services without regard to race, color, or national origin.

(7) The center or system shall be adequately maintained and kept clean and sanitary.

(8) The State may promulgate reasonable rules and regulations on the conduct of the information center or system in the interests of the public.

(9) The State may terminate the lease or agreement for violation of its terms or for other cause.

[43 FR 19390, May 5, 1978, as amended at 48 FR 38611, Aug. 25, 1983]

§ 752.9 Scenic lands.

(a) Acquisition of interests in and improvement of strips of land or water areas adjacent to Federal-aid highways may be made as necessary for restoration, preservation, and enhancement of scenic beauty.

(b) Scenic strip interests may be acquired in urban or rural areas, combined in one or more projects, authorized separately whether or not there is or has been a Federal-aid project on the adjoining Federal-aid highway.

(c) Approval of acquisition and development of scenic strips on completed Interstate should be conditioned on a showing that the acquisition of scenic strips was considered under the Highway Beautification Program for that particular section of Interstate.

§ 752.10 Abandoned vehicles.

(a) Abandoned motor vehicles may be removed from the right-of-way and from private lands adjacent to Federal-aid highways for the restoration, preservation, or enhancement of scenic beauty as seen from the traveled way of the highway as a landscape or roadside development project.

(b) The State shall obtain permission or sufficient legal authority to go on private land to carry out this program. Where feasible, an agreement should be made with the owner that he will not in the future place junk, or allow junk to be placed, on his land so as to create an eyesore to the traveling public. The permission or authority and the agreement may be informal.

(c) The collection of abandoned motor vehicles from within the right-of-way must be a development project and not a maintenance operation. Once a State completes a development project for the removal of abandoned motor vehicles from within the highway right-of-way, it is obligated to continue the removal of future abandoned motor vehicles from within the development project limits without further participation.

§ 752.11 Federal participation.

(a) Federal-aid highway funds, but generally excluding Interstate construction funds, are available for landscape development; for the acquisition and development of safety rest areas, scenic overlooks, and scenic lands; for the development of information centers and systems; and for the removal of abandoned motor vehicles.

(b) Federal-aid highway funds may participate in any landscaping project undertaken pursuant to paragraph (a) of this section provided that at least one-quarter of one percent of funds expended for such landscaping project is used to plant native wildflower seeds or seedlings or both. The Administrator may, upon the request of a State highway agency, grant a waiver to this requirement provided the State certifies that:

(1) Native wildflowers or seedlings cannot be grown satisfactorily; or

(2) There is a scarcity of available planting areas; or

(3) The available planting areas will be used for agricultural purposes.

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(c) Subject to the requirement of paragraph (b) of this section, Federal-aid highway funds may participate in plant establishment periods in or associated with landscape development.

(d) Notwithstanding the provisions of paragraph (b) of this section, Federal-aid highway funds may participate in the planting of flowering materials, including native wildflowers, donated by garden clubs and other organizations or individuals.

(e) The value of donated plant materials shall not count toward the one-quarter of one percent minimum expenditure required by paragraph (b) of this section.

(f) Federal-aid funds may not be used for assemblage, printing, or distribution of information materials; for temporary or portable information facilities; or for installation, operation, or maintenance of vending machines.

[52 FR 34638, Sept. 14, 1987]

PART 770—AIR QUALITY CONFORMITY AND PRIORITY PROCEDURES FOR USE IN FEDERAL-AID HIGHWAY AND FEDERALLY-FUNDED TRANSIT PROGRAMS

Sec.
770.1 Purpose.
770.3 Definitions.
770.5 Policy.
770.7 Applicability.
770.9 Conformance.
770.11 Priority.
770.13 Construction.

AUTHORITY: 23 U.S.C. 109 (h) and (j), 315; 42 U.S.C. 4332, 7401 and 7506; 49 CFR 1.48(b).

SOURCE: 46 FR 8429, Jan. 26, 1981, unless otherwise noted.

§ 770.1 Purpose.

The purpose of this part is to set forth the procedures for implementing sections 176 (c) and (d) of the Clean Air Act of 1970, as amended (CAA) (42 U.S.C. 7401, *et seq.*), and the consistency requirement of 23 U.S.C. 109(j).

§ 770.3 Definitions.

(a) *Metropolitan planning organization (MPO)* is that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of sections 3(e)(1), 5(1), and 8 (a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(e)(1), 1604(1), and 1607 (a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) *National ambient air quality standards* are those standards established pursuant to 42 U.S.C. 7409 (section 109 of the CAA).

(c) *Nonattainment area* is any portion of an air quality control region for which any pollutant exceeds the national ambient air quality standard for the pollutant as designated pursuant to 42 U.S.C. 7407 (section 107 of the CAA).

(d) *State implementation plan (SIP)* is the plan required by 42 U.S.C. 7410 (section 110 of the CAA) to attain and maintain a national ambient air quality standard. For the purpose of this part, an approved SIP is the implementation plan, or most recent revision of this plan, which has been approved or promulgated by the Environmental Protection Agency (EPA) under section 110 of the CAA.

(e) *Transportation control measure (TCM)* is any measure in a SIP directed toward reducing emissions of air pollutants from transportation sources.

§ 770.5 Policy.

It is the policy of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) that transportation agencies responsible for the planning and implementation of transportation facilities and services pursuant to Titles 23 and 49, United States Code, consult with the local, State, and Federal air pollution control agencies, as appropriate, and ensure that plans, programs, and projects conform with approved SIP's and that adequate consideration is given to preservation and enhancement of air quality.

§ 770.7 Applicability.

The procedures in § 770.9 of this part are to be applied to activities in

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nonattainment areas or portions thereof, as designated under section 107(d) of the CAA, and in air quality maintenance areas where State and local officials have determined that TCM's are needed to attain and maintain the national ambient air quality standards for transportation-related pollutants. The procedures in § 770.13 of this part apply to all construction projects constructed with UMTA or FHWA funds. Conformance findings made under § 770.9 of this part also meet the consistency requirement of 23 U.S.C. 109(j).

§ 770.9 Conformance.

(a) *General.* Conformance between transportation plans, programs, and projects and the SIP is required by section 176(c) of the CAA (42 U.S.C. 7506(c)). The UMTA and FHWA have an affirmative responsibility to assure the conformity of any activity they support, fund, or approve. Further, section 176(c) prohibits an MPO from giving its approval to any project, program, or plan that does not conform to the SIP. The conformity requirement applies in all nonattainment and maintenance areas requiring transportation control plans for transportation-related pollutants. In such areas, transportation plans and programs will be judged in conformance with the SIP if they do not adversely affect the TCM's in the SIP, and they contribute to reasonable progress in implementing the TCM's contained in the SIP.

(b) *Conformance of transportation plans and programs.* (1) Conformance of plans and programs will be determined and documented by FHWA Regional and Division Administrators and by UMTA Regional Administrators as part of the certification and transportation improvement program reviews (23 CFR part 450 and 49 CFR part 613). These determinations will be based upon an evaluation of the following actions:

(i) The MPO's determination that the transportation plan and transportation improvement program adopted by the MPO policy board are in conformance with the SIP;

(ii) The FHWA and UMTA finding that the urban transportation planning process effectively incorporates air quality objectives and procedures required by adopted DOT/EPA guidelines in the development of the plan and program;

(iii) The FHWA and UMTA finding that coordination exists between air quality and transportation agencies, including a finding that the MPO has met locally established procedures (developed pursuant to sections 121 and 174 of the CAA (42 U.S.C. 7421, 7504)) to integrate transportation and air quality planning prior to approval of the plan or program by the MPO policy board;

(iv) The advancement of air quality planning tasks included in the unified planning work program (23 CFR part 450 and 49 CFR part 613) in accordance with work programs contained in the SIP;

(v) The timely programming of TCM's (which can be funded by FHWA or UMTA and which are contained in the SIP) by including these measures in the State's proposed program of projects (23 U.S.C. 105) approved by the FHWA and the annual element of the transportation improvement program (TIP/AE) (23 CFR part 450 and 49 CFR part 613) approved by the UMTA; and

(vi) The timely implementation of TCM's contained in the SIP, consistent with the priority required for these measures by section 176(d) of the CAA (42 U.S.C. 7506(d)) and subject to the availability of Federal funds.

(2) The June 14, 1978, Memorandum of Understanding [1] between the EPA and the DOT provides the EPA an opportunity to jointly review and comment on conformity of transportation plans and programs. When it is determined through the evaluation of these actions that reasonable progress is not being made on transportation planning or implementation commitments in the SIP, representatives of the UMTA, FHWA and EPA will meet with affected State and local jurisdictions and agencies, and MPO's to dis-

[1] Available for inspection and copying from FHWA and UMTA as prescribed in 49 CFR part 7.

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cuss problem resolution before the UMTA and FHWA make a final conformance determination. These discussions should focus upon, as appropriate, accelerating implementation of TCM's in the SIP and developing and implementing acceptable substitutes for delayed projects.

(3) Once the evaluation of actions in paragraph (b)(1) of this section has been completed (including the joint UMTA/FHWA/EPA meeting with State and local representatives, where necessary) and the UMTA and FHWA have determined that an area's plan or program does not conform to the SIP, transportation program approvals will be limited in the area to preliminary engineering and environmental impact studies, advance right-of-way purchases involving hardship cases, and those actions that are exempt from sanctions under section 176(a) of the CAA (42 U.S.C. 7506(a)), as defined in the EPA-DOT Final Policy and Procedures Memorandum on Federal assistance limitations (45 FR 24692, April 10, 1980)[1] until the deficiencies are corrected and a conformance finding is made.

(c) *Conformance of transportation projects.* A project conforms to a SIP if:

(1) It is a TCM from the SIP (should the project be specifically included in the SIP, no separate conformance finding need be made); or

(2) It comes from a conforming transportation improvement program; or

(3) It is a project, exempt from transportation improvement program requirements, which does not adversely affect the TCM in the approved SIP. Exempt projects are those primary system and Interstate system safety projects included in the statewide safety improvement program (instead of the TIP) and emergency relief, junkyard control, outdoor advertising, and pavement-marking demonstration projects.

(d) *Projects not subject to further conformity review.* After approval of a final environmental impact statement (EIS) or after a formal finding or determination that a project will involve no significant environmental impact, a project will not be subject to further conformity review unless:

(1) A supplemental EIS significantly related to air quality considerations is undertaken; or

(2) A SIP revision is requested, in which case the procedures in paragraph (e) of this section would be followed; or

(3) Major steps toward implementation of the project (such as the start of construction or substantial acquisition and relocation activities) have not commenced within 3 years of the date of approval of the final EIS.

(e) *Project approvals during subsequent SIP revisions*—(1) *EPA activities.* (i) There may be situations that would cause the EPA to require the SIP to be revised. The revisions may add TCM's to an SIP which previously had none or increase the emission reduction responsibility of the transportation sector. The EPA will determine the need for SIP revisions based upon its review of the reasonable further progress schedule in the SIP and the degree to which the schedule is being met. Some of the situations which could affect the meeting of this schedule are:

(A) Incorrect assumptions on growth rates and travel demand;

(B) Overly optimistic expectations of stationary source controls, vehicle inspection and maintenance programs, or TCM's; and

(C) Inability to implement some portion(s) of the SIP.

(ii) By publication in the FEDERAL REGISTER, the EPA will notify the FHWA, UMTA, and the public when a SIP revision has been requested. The EPA intends to require all of the current SIP's (where carbon monoxide and ozone are major concerns) to contain a contingency provision which would apply when monitoring of progress reporting indicates that reasonable further progress toward attainment of air quality standards is not being maintained, and the EPA determines the SIP must be revised. For areas over 200,000 population, the contingency provision in the SIP should include a locally developed list of projects which implementing agencies have agreed can be delayed during an

[1] See footnote 1 to § 770.9(b)(2).

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interim period while the SIP is being revised.

(2) *FHWA and UMTA activities.* After notification by the EPA that a SIP revision has been requested, and for a 12-month period thereafter or until the SIP is formally revised, whichever is shorter, the UMTA and FHWA will not authorize construction of any project contained in a SIP contingency provision list unless it is a project exempt from sanctions under section 176(a) of the CAA.

§ 770.11 Priority.

(a) Section 176(d) of the CAA requires Federal agencies with authority to support or fund transportation-related activities to give priority to implementing the TCM's in the SIP. In accordance with § 770.9 of this part, a conformity determination of the transportation program cannot be made unless the program contributes to reasonable progress in implementing the TCM's in the SIP. In this respect, the conformance and priority requirements are clearly related, and priority for air quality-related projects should be assured through conformance procedures.

(b) The FHWA will meet this requirement through implementation of the Federal-Aid Programs Approval and Project Authorization regulation, 23 CFR part 630, subpart A, which provides for the FHWA's review and approval of programs and projects. A review of progress will be made by the FHWA at the time of TIP/AE review and annual program of projects approval.

(c) The UMTA will meet this requirement through the TIP/AE review and approval process under 49 CFR part 613. Air quality projects are to be given significant emphasis by MPO's in developing the TIP/AE and by the UMTA in its approval of the TIP/AE. A review of implementation progress will be made by the UMTA at the time of TIP/AE review and approval, and will be addressed specifically in the UMTA's TIP review memorandum.

(d) The FHWA and UMTA regional/division representatives will negotiate procedures with EPA regional offices for ensuring that the EPA receives copies of the progress reviews and approval documents listed in paragraphs (b) and (c) of this section. The June 14, 1978, Memorandum of Understanding provides the EPA Regional Administrator with an opportunity to review the TIP/AE at the time it is forwarded by a State or local agency for Federal agency action. If the EPA Regional Administrator determines that the TIP/AE does not contribute to reasonable progress in implementing the TCM's in the SIP, he/she will submit recommendations for remedial or alternative action to the FHWA and UMTA regional/division representatives. The FHWA and UMTA will explicitly consider the EPA's comments and will notify the EPA of the disposition of its comments before acting on the TIP/AE.

(e) Similarly, under the June 14, 1978, Memorandum of Understanding, the FHWA and UMTA regional/division representatives will be provided an opportunity to review the SIP at the time it is forwarded to the EPA for approval. In light of the priority requirement in section 176(d) of the CAA, FHWA and UMTA reviews of the SIP should consider the projected availability of Federal resources to meet transportation commitments in the SIP and also to meet other priorities or obligations.

(f) Where other priorities are a consideration, non-SIP transportation measures can be funded or implemented to meet these obligations. However, SIP-related transportation measures must retain a high priority and funding decisions must promote timely implementation of SIP measures to the extent that funds are available.

§ 770.13 Construction.

(a) The transportation agency receiving funds from FHWA, UMTA, or both, shall take steps to assure that its current specifications, and any revisions thereof, and the use of specific equipment and/or materials associated with construction conform with the approved SIP. This shall be accomplished in coordination with the State's air pollution control agency.

(b) The transportation agency shall establish procedures to ensure that

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changes in the SIP are reviewed to determine if revisions to the construction specifications will be necessary.

(c) Revisions to the construction specifications resulting from the above requirements shall be made in consultation with the FHWA and UMTA, as appropriate.

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

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AUTHORITY: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 109, 128, 138 and 315; 49 U.S.C. 303(c), 1602(d), 1604(h), 1604(i), and 1610; 40 CFR part 1500 *et seq.;* 49 CFR 1.48(b) and 1.51.

SOURCE: 52 FR 32660, Aug. 28, 1987, unless otherwise noted.

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and the regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508. This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and urban mass transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, and 49 U.S.C. 303, 1602(d), 1604(h), 1604(i), 1607a, 1607a-1 and 1610.

§ 771.103 [Reserved]

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.[1]

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(d) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the pro-

[1] FHWA and UMTA have supplementary guidance on the format and content of NEPA documents for their programs. This includes a list of various environmental laws, regulations, and Executive orders which may be applicable to projects. The FHWA Technical Advisory T6640.8A, October 30, 1987, and the UMTA supplementary guidance are available from the respective FHWA and UMTA headquarters and field offices as prescribed in 49 CFR part 7, Appendices D and G.

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posed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

[52 FR 32660, Aug. 28, 1987; 53 FR 11065, Apr. 5, 1988]

§ 771.107 Definitions.

The definitions contained in the CEQ regulation and in Titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply.

(a) *Environmental studies.* The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

(b) *Action.* A highway or transit project proposed for FHWA or UMTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) *Administration action.* The approval by FHWA or UMTA of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(d) *Administration.* FHWA or UMTA, whichever is the designated lead agency for the proposed action.

(e) *Section 4(f).* Refers to 49 U.S.C. 303 and 23 U.S.C. 138.[2]

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this regulation and the CEQ regulation apply to actions where the Administration exercises sufficient control to condition the permit or project approval. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation.

(2) This regulation does not apply to, or alter approvals by the Administration made prior to the effective date of this regulation.

(3) Environmental documents accepted or prepared by the Administration after the effective date of this regulation shall be developed in accordance with this regulation.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and contruction inspections.

(c) The Administration, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will

[2] Section 4(f), which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified, without substantive change, as 49 U.S.C. 303. This regulation continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as *section 4(f)* matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

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be determined by the Administration accordance with the CEQ regulation:

(1) *Statewide agency.* If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may prepare the environmental impact statement (EIS) and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(2) *Joint lead agency.* If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant shall initially develop substantive portions of the environmental document, although the Administration will be responsible for its scope and content.

(3) *Cooperating agency.* Local public agenices with special expertise in the proposed action may be cooperating agencies in the preparation of an environmental document. An applicant for capital assistance under the Urban Mass Transportation Act of 1964, as amended (UMT Act), is presumed to be a cooperating agency if the conditions in paragraph (c) (1) or (2) of this section do not apply. During the environmental process, the Administration will determine the scope and content of the environmental document and will direct the applicant, acting as a cooperating agency, to develop information and prepare those portions of the document concerning which it has special expertise.

(4) *Other.* In all other cases, the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

§ 771.111 Early coordination, public involvement, and project development.

(a) Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action. For UMTA, this is normally no later than the review of the transportation improvement program (TIP) and for FHWA, the approval of the 105 program (23 U.S.C. 105).

(c) When FHWA and UMTA are involved in the development of joint projects, or when FHWA or UMTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the Administration, in cooperation with the applicant, may request other agencies having special interest or expertise to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Other States, and Federal land management entities, that may be significantly affected by the action or by any of the alternatives shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will prepare a written evaluation of any significant unresolved issues and furnish it to the applicant for incorpo-

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ration into the environmental assessment (EA) or draft EIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process.

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive orders, and regulations.

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives, and major design features,

(C) The social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process.

(E) The State highway agency's procedures for receiving both oral and written statements from the public.

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

(3) Based on the reevaluation of project environmental documents required by § 771.129, the FHWA and the State highway agency will determine whether changes in the project or new information warrant additional public involvement.

(4) Approvals or acceptances of public involvement/public hearing procedures prior to the publication date of this regulation remain valid.

(i) Applicants for capital assistance in the UMTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental documents. For projects requiring EISs, a

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public hearing will be held during the circulation pericd of the draft EIS. For all other projects, an opportunity for public hearings will be afforded with adequate prior notice pursuant to 49 U.S.C. 1602(d), 1604(i), 1607a(f) and 1607a-1(d), and such hearings will be held when anyone with a significant social, economic, or environmental interest in the matter requests it. Any hearing on the action must be coordinated with the NEPA process to the fullest extent possible.

(j) Information on the UMTA environmental process may be obtained from: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, DC 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington, DC 20590.

§ 771.113 Timing of Administration activities.

(a) The Administration in cooperation with the applicant will perform the work necessary to complete a FONSI or an EIS and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. However, final design activities, property acquisition (with the exception of hardship and protective buying, as defined in § 771.117(d)), purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been completed:

(1)(i) The action has been classified as a categorical exclusion (CE), or

(ii) A FONSI has been approved, or

(iii) A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed;

(2) For actions proposed for FHWA funding, the FHWA Division Administrator has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, subpart B, and 23 CFR part 630, subpart A, have been met.

(b) For FHWA, the completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving official. However, such approval does not commit the Administration to approve any future grant request to fund the preferred alternative.

(c) Letters of Intent issued under the authority of section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

§ 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EISs).* Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) *Class II (CEs).* Actions that do not individually or cumulative have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d).

(c) *Class III (EAs).* Actions in which the significance of the environmental

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impact is not clearly estabilished. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

§ 771.117 Categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significnt environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by section 4(f) of the DOT Act or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and § 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's *highway safety plan* under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing

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facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.[3] Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition quality for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will

[3] Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

Protective acquisition is done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

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initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

§ 771.119 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through an early coordination process (i.e., procedures under § 771.111) or through a scoping process. Public involvement shall be summarized and the results of agency coordination shall be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. The UMTA applicants may circulate the EA prior to Administration approval provided that the document is clearly labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, shall be sent by the applicant to the affected units of Federal, State and local government. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in § 771.111.

(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines, for good cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the Administration expects to issue a FONSI for an action described in § 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability

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shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

§ 771.121 Findings of no significant impact.

(a) The Administration will review the EA and any public hearing comments and other comments received regarding the EA. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the other agency's FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed, and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's FONSI. If environmental issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the FEDERAL REGISTER. Applicants are encouraged to announce the intent to prepare an EIS by apprpriate means at the local level.

(b) After publication of the Notice of Intent, the Administration, in cooperation with the applicant, will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by § 771.111. For UMTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive orders to the extent appropriate at this stage in the environmental process.

(d) An applicant which is a *statewide agency* may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures. Where the applicant is a *joint lead* or *cooperating* agency, the applicant may select a consultant, after coordination with the Administration to assure compliance with 40 CFR 1506.5(c). The Administration will select any such consultant for *other* applicants. (See § 771.109(c) for definitions of these terms.)

(e) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

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(f) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The draft EIS shall be circulated for comment by the applicant on behalf of the Administration. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. Copies shall be provided directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(h) The UMTA requires a public hearing during the circulation period of all draft EISs. FHWA public hearing requirements are as described in § 771.111(h). Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The FEDERAL REGISTER public availability notice (40 CFR 1506.10) shall establish a period of not less than 45 days for the return of comments on the draft EIS. The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) For UMTA funded major urban mass transportation investments, the applicant shall prepare a report identifying a locally preferred alternative at the conclusion of the Draft EIS circulation period. Approval may be given to begin preliminary engineering on the principal alternative(s) under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the final EIS or, where appropriate, a supplemental draft EIS.

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The final EIS shall identify the preferred alternative and evaluate all reasonable alternatives considered. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and de-

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scribe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in § 771.109(b). The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS shall identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.

(2) Any action to which a Federal, State or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(3) Major urban mass transportation investments as defined by UMTA's policy on major investments (49 FR 21284; May 18, 1984).

(d) The signature of the UMTA approving official on the cover sheet also indicates compliance with section 14 of the UMT Act and fulfillment of the grant application requirements of sections 3(d)(1) and (2), 5(h), and 5(i) of the UMT Act.

(e) Approval of the final EIS is not an Administration Action (as defined in § 771.107(c)) and does not commit the Administration to approve any future grant request to fund the preferred alternative.

(f) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 which implements Executive Order 12372. When filed with EPA, the final EIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate.

§ 771.127 Record of decision.

(a) The Administration will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the final EIS notice in the FEDERAL REGISTER or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project and docu-

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ment any required section 4(f) approval in accordance with § 771.135(l). Until any required ROD has been signed, no further approvals may be given except for administrative activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1.

(b) If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which reviewed the final EIS under § 771.125(c). To the extent practicable the approved revised ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS pursuant to § 771.125(g).

§ 771.129 Re-evaluations.

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the Administration if an acceptable final EIS is not submitted to the Administration within 3 years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

§ 771.130 Supplemental environmental impact statements.

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever the Administration determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearings on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared and circulated in accordance with § 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required.

(e) A supplemental draft EIS may be necessary for UMTA major urban mass transportation investments if

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there is a substantial change in the level of detail on project impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.

(f) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily:

(1) Prevent the granting of new approvals;

(2) Require the withdrawal of previous approvals; or

(3) Require the suspension of project activities; for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

§ 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

§ 771.133 Compliance with other requirements.

The final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128.

§ 771.135 Section 4(f) (49 U.S.C. 303).

(a)(1) The Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire site is not significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant. The Administration will review the significance determination to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl purposes. The determination as to which lands so function or are so designated, and

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the significance of those lands, shall be made by the officials having jurisdiction over the lands. The Administration will review this determination to assure its reasonableness. The determination of significance shall apply to the entire area of such park, recreation, or wildlife and waterfowl refuge sites.

(e) In determining the application of section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify all properties on or eligible for the National Register of Historic Places (National Register). The section 4(f) requirements apply only to sites on or eligible for the National Register unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(f) The Administration may determine that section 4(f) requirements do not apply to restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The SHPO and the Advisory Council on Historic Preservation (ACHP) have been consulted and have not objected to the Administration finding in paragraph (f)(1) of this section.

(g)(1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction except as set forth in paragraph (g)(2) of this section. Where section 4(f) applies to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

(2) Section 4(f) does not apply to archeological sites where the Administration, after consultation with the SHPO and the ACHP, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the Administration decides, with agreement of the SHPO and, where applicable, the ACHP not to recover the resource.

(h) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (g) of this section, the Administration may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(i) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be developed by the applicant in cooperation with the Administration. This information should be presented in the draft EIS, EA, or, for a project classified as a CE in a separate document. The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. A minimum of 45 days shall be established by the Administration for receipt of comments. Uses of section 4(f) land covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

(j) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, FONSI, or separate section 4(f) evaluation shall specifically address:

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(1) The reasons why the alternatives to avoid a section 4(f) property are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the section 4(f) property.

(k) The final Section 4(f) evaluation will be reviewed for legal sufficiency.

(l) For actions processed with EISs, the Administration will make the section 4(f) approval either in its approval of the final EIS or in the ROD. Where the section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notified by the Administration of section 4(f) approval. For these actions, any required section 4(f) approval will be documented separately.

(m) Circulation of a separate section 4(f) evaluation will be required when:

(1) A proposed modification of the alignment or design would require the use of section 4(f) property after the CE, FONSI, draft EIS, or final EIS has been processed;

(2) The Administration determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property;

(3) A proposed modification of the alignment, design, or measures to minimize harm (after the original section 4(f) approval) would result in a substantial increase in the amount of section 4(f) land used, a substantial increase in the adverse impacts to section 4(f) land, or a substantial reduction in mitigation measures; or

(4) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) evaluation.

(n) If the Administration determines under § 771.135(m) or otherwise, that section 4(f) is applicable after the CE, FONSI, or final EIS has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental environmental document. Where a separately circulated section 4(f) evaluation is prepared, such evaluation does not necessarily:

(i) Prevent the granting of new approvals;

(ii) Require the withdrawal of previous approvals; or

(iii) Require the suspension of project activities; for any activity not affected by the section 4(f) evaluation.

(o) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary determination is then incorporated into the first-tier EIS.

(2) A section 4(f) approval made when additional design details are available will include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (o)(1) of this section is still valid; and

(ii) The criteria of paragraph (a) of this section have been met.

(p) *Use.* (1) Except as set forth in paragraphs (f), (g)(2), and (h) of this section, "use" (in paragraph (a)(1) of this section) occurs:

(i) When land is permanently incorporated into a transportation facility;

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(ii) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes as determined by the criteria in paragraph (p)(7) of this section; or

(iii) When there is a constructive use of land.

(2) Constructive use occurs when the transportation project does not incorporate land from a section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished.

(3) The Administration is not required to determine that there is no constructive use. However, such a determination could be made at the discretion of the Administration.

(4) The Administration has reviewed the following situations and determined that a constructive use occurs when:

(i) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(ii) The proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. Examples of substantial impairment to visual or esthetic qualities would be the location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting;

(iii) The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;

(iv) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as projected vibration levels from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(v) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

(5) The Administration has reviewed the following situations and determined that a constructive use does *not* occur when:

(i) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places, results in an agreement of "no effect" or "no adverse effect";

(ii) The projected traffic noise levels of the proposed highway project do not exceed the FHWA noise abatement critieria as contained in Table 1, 23 CFR part 772, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria in the UMTA guidelines;

(iii) The projected noise levels exceed the relevant threshold in paragraph (p)(5)(ii) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(iv) There are proximity impacts to a section 4(f) resource, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the Administration ap-

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proval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of the resource. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register;

(v) There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to:

(A) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource, or

(B) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;

(vi) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);

(vii) Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur under a no-build scenario;

(viii) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or

(ix) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

(6) When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(i) Identification of the current activities, features, or attributes of a resource qualified for protection under section 4(f) and which may be sensitive to proximity impacts;

(ii) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project;

(iii) Consultation, on the above identification and analysis, with the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

(7) A temporary occupancy of land is so minimal that it does not constitute a use within the meaning of section 4(f) when the following conditions are satisfied:

(i) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(ii) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;

(iii) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;

(iv) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and

(v) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988, as amended at 56 FR 13279, Apr. 1, 1991]

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EFFECTIVE DATE NOTE: At 56 FR 13279, Apr. 1, 1991, § 771.135 was amended by adding paragraph (p), effective May 1, 1991.

§ 771.137 International actions.

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(2) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Sec.

772.1 Purpose.
772.3 Noise standards.
772.5 Definitions.
772.7 Applicability.
772.9 Analysis of traffic noise impacts and abatement measures.
772.11 Noise abatement.
772.13 Federal participation.
772.15 Information for local officials.
772.17 Traffic noise prediction.
772.19 Construction noise.

TABLE 1 TO PART 772—NOISE ABATEMENT CRITERIA

APPENDIX A TO PART 772—NATIONAL REFERENCE ENERGY MEAN EMISSION LEVELS AS A FUNCTION OF SPEED

AUTHORITY: 23 U.S.C. 109(h), 109(i); 42 U.S.C. 4331, 4332; 49 CFR 1.48(b).

SOURCE: 47 FR 29654, July 8, 1982; 47 FR 33956, Aug. 5, 1982, unless otherwise noted.

§ 772.1 Purpose.

To provide procedures for noise studies and noise abatement measures to help protect the public health and welfare, to supply noise abatement criteria, and to establish requirements for information to be given to local officials for use in the planning and design of highways approved pursuant to title 23 U.S.C.

§ 772.3 Noise standards.

The highway traffic noise prediction requirements, noise analyses, noise abatement criteria, and requirements for informing local officials in this regulation constitute the noise standards mandated by 23 U.S.C. 109(i). All highway projects which are developed in conformance with this regulation shall be deemed to be in conformance with the Federal Highway Administration (FHWA) noise standards.

§ 772.5 Definitions.

(a) *Design year.* The future year used to estimate the probable traffic volume for which a highway is designed. A time, 10 to 20 years, from the start of construction is usually used.

(b) *Existing noise levels.* The noise, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(c) L_{10}. The sound level that is exceeded 10 percent of the time (the 90th percentile) for the period under consideration.

(d) $L_{10}(h)$. The hourly value of L_{10}.

(e) *Leq*—the equivalent steady-state sound level which in a stated period of time contains the same acoustic energy as the time-varying sound level during the same time period.

(f) *Leq*(h). The hourly value of Leq.

(g) *Traffic noise impacts.* Impacts which occur when the predicted traffic noise levels approach or exceed the noise abatement criteria (Table 1), or when the predicted traffic noise levels substantially exceed the existing noise levels.

(h) *Type I projects.* A proposed Federal or Federal-aid highway project for the construction of a highway on new location or the physical alteration of an existing highway which significantly changes either the horizonal or vertical alignment or increases the number of through-traffic lanes.

(i) *Type II projects.* A proposed Federal or Federal-aid highway project

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for noise abatement on an existing highway.

§ 772.7 Applicability.

(a) *Type I projects.* This regulation applies to all Type I projects unless it is specifically indicated that a section applies only to Type II projects.

(b) *Type II projects.* The development and implementation of Type II projects are not mandatory requirements of 23 U.S.C. 109(i) and are, therefore, not required by this regulation. When Type II projects are proposed for Federal-aid highway participation at the option of the highway agency, the provisions of §§ 772.9(c), 772.13, and 772.19 of this regulation shall apply.

§ 772.9 Analysis of traffic noise impacts and abatement measures.

(a) The highway agency shall determine and analyze expected traffic noise impacts and alternative noise abatement measures to mitigate these impacts, giving weight to the benefits and cost of abatement, and to the overall social, economic and environmental effects.

(b) The traffic noise analysis shall include the following for each alternative under detailed study:

(1) Identification of existing activities, developed lands, and undeveloped lands for which development is planned, designed and programmed, which may be affected by noise from the highway;

(2) Prediction of traffic noise levels;

(3) Determination of existing noise levels;

(4) Determination of traffic noise impacts; and

(5) Examination and evaluation of alternative noise abatement measures for reducing or eliminating the noise impacts.

(c) Highway agencies proposing to use Federal-aid highway funds for Type II projects shall perform a noise analysis of sufficient scope to provide information needed to make the determination required by § 772.13(a) of this chapter.

§ 772.11 Noise abatement.

(a) In determining and abating traffic noise impacts, primary consideration is to be given to exterior areas. Abatement will usually be necessary only where frequent human use occurs and a lowered noise level would be of benefit.

(b) In those situations where there are no exterior activities to be affected by the traffic noise, or where the exterior activities are far from or physically shielded from the roadway in a manner that prevents an impact on exterior activities, the interior criterion shall be used as the basis of determining noise impacts.

(c) If a noise impact is identified, the abatement measures listed in § 772.13(c) of this chapter must be considered.

(d) When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions.

(e) Before adoption of a final environmental impact statement or finding of no significant impact, the highway agency shall identify:

(1) Noise abatement measures which are reasonable and feasible and which are likely to be incorporated in the project, and

(2) Noise impacts for which no apparent solution is available.

(f) The views of the impacted residents will be a major consideration in reaching a decision on the reasonableness of abatement measures to be provided.

(g) The plans and specifications will not be approved by FHWA unless those noise abatement measures which are reasonable and feasible are incorporated into the plans and specifications to reduce or eliminate the noise impact on existing activities, developed lands, or undeveloped lands for which development is planned, designed, and programmed.

§ 772.13 Federal participation.

(a) Federal funds may be used for noise abatement measures where:

(1) A traffic noise impact has been identified,

(2) The noise abatement measures will reduce the traffic noise impact, and

(3) The overall noise abatement benefits are determined to outweigh the

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overall adverse social, economic, and environmental effects and the costs of the noise abatement measures.

(b) For Type II projects, noise abatement measures will not normally be approved for those activities and land uses which come into existence after May 14, 1976. However, noise abatement measures may be approved for activities and land uses which come into existence after May 14, 1976, provided local authorities have taken measures to exercise land use control over the remaining undeveloped lands adjacent to highways in the local jurisdiction to prevent further development of incompatible activities.

(c) The noise abatement measures listed below may be incorporated in Type I and Type II projects to reduce traffic noise impacts. The costs of such measures may be included in Federal-aid participating project costs with the Federal share being the same as that for the system on which the project is located, except that Interstate construction funds may only participate in Type I projects.

(1) Traffic management measures (e.g., traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits, and exclusive land designations).

(2) Alteration of horizontal and vertical alignments.

(3) Acquisition of property rights (either in fee or lesser interest) for construction of noise barriers.

(4) Construction of noise barriers (including landscaping for esthetic purposes) whether within or outside the highway right-of-way. Interstate construction funds may not participate in landscaping.

(5) Acquisition of real property or interests therein (predominantly unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise. This measure may be included in Type I projects only.

(6) Noise insulation of public use or nonprofit institutional structures.

(d) There may be situations where (1) severe traffic noise impacts exist or are expected, and (2) the abatement measures listed above are physically infeasible or economically unreasonable. In these instances, noise abatement measures other than those listed in § 772.13(c) of this chapter may be proposed for Types I and II projects by the highway agency and approved by the Regional Federal Highway Administrator on a case-by-case basis when the conditions of § 772.13(a) of this chapter have been met.

§ 772.15 Information for local officials.

In an effort to prevent future traffic noise impacts on currently undeveloped lands, highway agencies shall inform local officials within whose jurisdiction the highway project is located of the following:

(a) The best estimation of future noise levels (for various distances from the highway improvement) for both developed and undeveloped lands or properties in the immediate vicinity of the project,

(b) Information that may be useful to local communities to protect future land development from becoming incompatible with anticipated highway noise levels, and

(c) Eligibility for Federal-aid participation for Type II projects as described in § 772.13(b) of this chapter.

§ 772.17 Traffic noise prediction.

(a) Any traffic noise prediction method is approved for use in any noise analysis required by this regulation if it generally meets the following two conditions:

(1) The methodology is consistent with the methodology in the FHWA Highway Traffic Noise Prediction Model (Report No. FHWA-RD-77-108).*

(2) The prediction method uses noise emission levels obtained from one of the following:

(i) National Reference Energy Mean Emission Levels as a Function of Speed (appendix A).

(ii) Determination of reference energy mean emission levels in Sound Procedures for Measuring Highway Noise: Final Report, DP-45-1R.*

*These documents are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

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(b) In predicting noise levels and assessing noise impacts, traffic characteristics which will yield the worst hourly traffic noise impact on a regular basis for the design year shall be used.

§ 772.19 Construction noise.

The following general steps are to be performed for all Types I and II projects:

(a) Identify land uses or activities which may be affected by noise from construction of the project. The identification is to be performed during the project development studies.

(b) Determine the measures which are needed in the plans and specifications to minimize or eliminate adverse construction noise impacts to the community. This determination shall include a weighing of the benefits achieved and the overall adverse social, economic and environmental effects and the costs of the abatement measures.

(c) Incorporate the needed abatement measures in the plans and specifications.

TABLE 1—NOISE ABATEMENT CRITERIA

[Hourly A-Weighted Sound Level—decibels (dBA)[1]]

Activity Category	Leq(h)	$L_{10}(h)$	Description of activity category
A	57 (Exterior)	60 (Exterior)	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	67 (Exterior)	70 (Exterior)	Picnic areas, recreation areas, playgrounds, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals.
C	72 (Exterior)	75 (Exterior)	Developed lands, properties, or activities not included in Categories A or B above.
D			Undeveloped lands.
E	52 (Interior)	55 (Interior)	Residences, motels, hotels, public meeting rooms, schools, churches, libraries, hospitals, and auditoriums.

[1] Either $L_{10}(h)$ or Leq(h) (but not both) may be used on a project.

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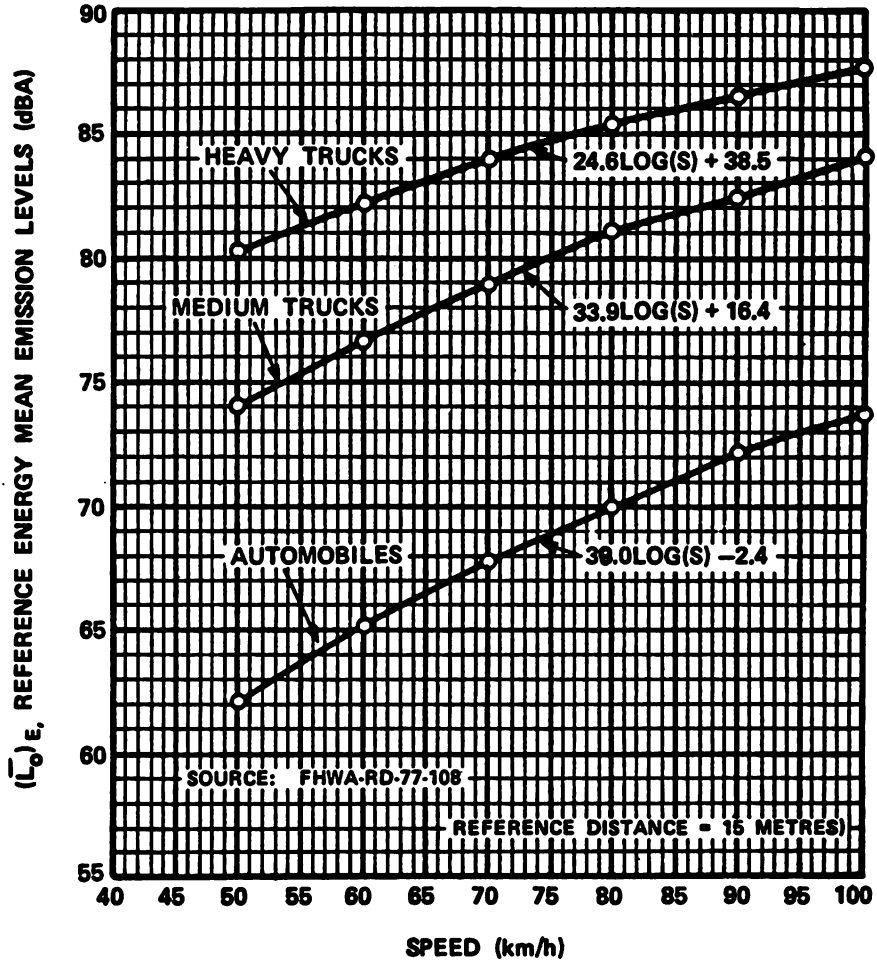
APPENDIX A



LEGEND:

1. AUTOMOBILES: ALL VEHICLES WITH TWO AXLES AND FOUR WHEELS.
2. MEDIUM TRUCKS: ALL VEHICLES WITH TWO AXLES AND SIX WHEELS.
3. HEAVY TRUCKS: ALL VEHICLES WITH THREE OR MORE AXLES.

National Reference Energy Mean Emission Levels as a Function of Speed

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PART 777—MITIGATION OF ENVIRONMENTAL IMPACTS TO PRIVATELY OWNED WETLANDS

Sec.
777.1 Purpose.
777.3 Background.
777.5 Federal participation policy.
777.7 Evaluation of impacts.
777.9 Mitigation of impacts.
777.11 Other considerations.

AUTHORITY: 42 U.S.C. 4321 et seq.; 23 U.S.C. 109(h), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

SOURCE: 45 FR 50730, July 31, 1980, unless otherwise noted.

§ 777.1 Purpose.

To provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to privately owned wetlands caused by new construction of Federal-aid highway projects.

§ 777.3 Background.

Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A, preservation of the Nation's Wetlands, emphasize the important functions and values inherent in the Nation's wetlands. Federal agencies are required to avoid new construction in wetlands unless the head of the agency determines that: (a) There is no practicable alternative to such construction, and (b) the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

§ 777.5 Federal participation policy.

(a) Those measures which the Federal Highway Administration (FHWA) and a State highway agency (SHA) find to be appropriate and necessary to mitigate adverse environmental impacts to privately owned wetlands are eligible for Federal participation where the impacts actually result from an FHWA action. The justification for the cost of proposed mitigation measures should be considered in the same context as any other public expenditure; that is, the proposed mitigation represents a reasonable public expenditure when weighed against other social, economic, and environmental values, and the benefit realized is commensurate with the proposed expenditure. Mitigation measures shall give like consideration to traffic needs, safety, durability, and economy of maintenance of the highway.

(b) It is FHWA policy to permit, consistent with the limits set forth in this part, the expenditure of Federal-aid highway funds for the acquisition of land or interests therein for the purpose of mitigating environmental damages when privately owned wetlands are directly affected by a Federal-aid highway project.

[45 FR 50730, July 31, 1980, as amended at 52 FR 8250, Mar. 17, 1987]

§ 777.7 Evaluation of impacts.

(a) The extent of Federal-aid participation in measures to mitigate adverse highway impacts to privately owned wetlands should be directly related to:

(1) The importance of the impacted wetlands, and

(2) The highway impact on the wetlands.

(b) Evaluation of the importance of the impacted wetlands should consider:

(1) The primary functions of the wetlands (e.g., flood control, wildlife habitat, erosion control, etc.);

(2) The relative importance of these functions to the total wetland resource of the area; and

(3) Other factors such as uniqueness, esthetics, etc.

(c) A determination of the highway impact should focus on how the project affects the stability and quality of the wetlands. This evaluation should consider the short- and long-term effects on the wetlands and the importance of any loss such as:

(1) Flood control capacity,

(2) Erosion control potential,

(3) Water pollution abatement capacity, and

(4) Wildlife habitat value.

[45 FR 50730, July 31, 1980, as amended at 52 FR 8250, Mar. 17, 1987]

§ 777.9 Mitigation of impacts.

There are a number of actions that can be taken to minimize the impact of highway projects on privately owned wetlands. In order to qualify

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for Federal-aid highway funding, actions to minimize impacts should be considered in the order listed.

(a) First consideration must be given to the mitigation of wetland impacts within the highway right-of-way limits. This should include the enhancement of existing wetlands and the creation of new wetlands in the highway median, borrow pit areas, interchange areas, and along the roadside.

(b) There may, in some specific cases, be compelling reasons and sufficient justification to institute mitigation measures other than those set forth in paragraph (a) of this section. In these instances, the SHA may propose and the Regional Federal Highway Administrator may approve the following mitigation measures for implementation outside the highway right-of-way on a case-by-case basis. Such measures should be designed to reestablish, to the extent reasonable, a condition similar to that which would have existed if the project were not built.

(1) The use of Federal-aid funds to improve existing publicly owned wetlands. Improvements to existing wetlands can take such forms as water-level control and planting of wetland vegetation.

(2) The use of Federal-aid funds to purchase replacement wetlands. The first effort should be to create new wetlands or to restore wetlands. If this is not possible, then consideration should be given to the acquisition of interests in existing privately owned wetlands. In any case, the public interest in replacement wetlands must be sufficient to ensure that the area is maintained as a wetland.

§ 777.11 Other considerations.

(a) The development of measures proposed to mitigate wetlands impacts should include consultation with appropriate State and Federal agencies.

(b) The definition of wetlands on a project will be in accordance with the definition issued by the U.S. Army Corps of Engineers (33 CFR 323.2(c)).

(c) The acquisition of proprietary interests in replacement wetlands as a mitigation measure may be in fee simple or by easement, as appropriate.

(d) An SHA may acquire privately owned lands in cooperation with another public agency. Such an arrangement may accomplish greater benefits than would otherwise be accomplished by the individual agency acting alone.

(e) An SHA may either transfer the title of lands acquired outside the right-of-way, without credit to Federal funds, to an appropriate public agency (e.g., U.S. Fish and Wildlife Service or State natural resource agency) or enter into an agreement with such agency to manage such lands. When such transfer occurs, there shall be an explicit agreement that the lands or interests therein transferred shall remain in the grantee agency's ownership or control so long as the lands continue to serve the purpose of the original acquisition. In the event the area transferred no longer serves the purpose of the original acquisition, the lands or interests therein transferred shall revert to the SHA for proper disposition.

(f) Participation in the cost of acquiring lands or interests therein will be limited to those costs necessary to acquire lands sufficient to provide not more than one acre of replacement lands for each acre of privately owned wetlands that is directly affected by a Federal-aid highway project. In determining the acreage of replacement land required, the acreage of wetlands maintained, restored, or created on the highway right-of-way (§ 777.9(a)) will be deducted and the amount of Federal participation in the improvement of publicly owned wetlands (§ 777.9(b)) will be considered.

(g) Federal-aid funds are not eligible for use to maintain or manage wetlands areas. Therefore, construction, improvement or acquisition of wetlands should not be considered unless arrangements can be made to assure the maintenance and viability of the wetlands resource.

(h) The acquisition of replacement wetlands as a mitigation measure is not mandatory and is applicable only where permitted by (or consistent with) State law.

(i) The policy set forth in this part does not extend to the acquisition of interests in lands outside of the highway right-of-way for the purpose of

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mitigating impacts caused by the taking of privately owned lands (not wetlands) that have value as wildlife habitat which may be affected by a Federal-aid highway project.

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SUBCHAPTER I—PUBLIC TRANSPORTATION

PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

Subpart A—General

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810.2 Purpose.
810.4 Definitions.
810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.
810.8 Coordination.

Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

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810.104 Applicability of other provisions.
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Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

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810.302 Eligible projects.
810.304 Submission of projects.
810.306 Reservation of funds.
810.308 Approval of urban system nonhighway public mass transit projects.
810.310 Applicability of other provisions.

AUTHORITY: 23 U.S.C. 137, 142, 149 and 315; sec. 4 of Pub. L. 97-134, 95 Stat. 1699; secs. 118, 120, and 163 of Pub. L. 97-424, 96 Stat. 2097; 49 CFR 1.48(b) and 1.51(f).

SOURCE: 50 FR 33917, Aug. 22, 1985, unless otherwise noted.

Subpart A—General

§ 810.2 Purpose.

The purpose of this regulation is to implement sections 137, 142, and 149 of title 23, U.S.C.

§ 810.4 Definitions.

(a) Except as otherwise provided terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) The following terms, where used in the regulations in this subpart have the following meanings:

(1) Exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes-one or more lanes of a highway facility or an entire highway facility where high occupancy vehicles, trucks or emergency vehicles or any combination thereof, are given, at all times or at any regularly scheduled times, a priority or preference over some or all other vehicles moving in the general stream of mixed highway traffic. Carpool lane(s)—is any high occupancy vehicle lane which allows use by carpools.

(2) Fringe and transportation corridor parking facilities—those facilities which are intended to be used for the temporary storage of vehicles and which are located and designed so as to facilitate the safe and convenient transfer of persons traveling in such vehicles to and from high occupancy vehicles and/or public mass transportation systems including rail. The term *parking facilities* includes but is not limited to access roads, buildings, structures, equipment, improvements and interests in land.

(3) High occupancy vehicle—a bus or other motorized passenger vehicle such as a carpool or vanpool vehicle used for ridesharing purposes and occupied by a specified minimum number of persons.

(4) Highway traffic control devices—traffic control devices as defined by the currently approved "Manual on Uniform Traffic Control Devices for Streets and Highways." [1]

(5) Metropolitan Planning Organization—that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meet-

[1] The MUTCD is incorporated by reference at 23 CFR part 655, subpart F.

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ing the requirements of sections 3(e)(1), 5(1), 8 (a) and (c) and 9(e)(3)(G) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602(e)(1), 1604(1), 1607 (a) and (c) and 1607a(e)(3)(G). This organization shall be the forum for cooperative transportation decisionmaking.

(6) Nonhighway public mass transit project—a project to develop or improve public mass transit facilities or equipment. A project need not be physically located or operated on a route designated as part of the Federal-aid urban system, but must be included in and related to a program for the development or improvement of an urban public mass transit system which includes the purchase and rehabilitation of passenger buses and rolling stock for fixed rail facilities, and the purchase, construction, reconstruction or improvement of fixed rail passenger operating facilities. Such projects may also include the construction, reconstruction or rehabilitation of passenger loading and unloading facilities for either bus or rail passengers.

(7) Passenger loading areas and facilities (including shelters)—areas and facilities located at or near passenger loading points for safety, protection, comfort, or convenience of high occupancy vehicle passengers. The term *areas and facilities* includes but is not limited to access roads, buildings, structures, equipment, improvements, and interest in land.

(8) Responsible local officials—(i) In areas under 50,000 population, the principal elected officials of general purpose local governments; or (ii) In urbanized areas, the principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization.

[50 FR 33917, Aug. 22, 1985, as amended at 51 FR 16834, May 7, 1986]

§ 810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.

(a) Projects in an urbanized area must be based on a continuing comprehensive transportation planning process, carried on in accordance with 23 U.S.C. 134 as prescribed in 23 CFR part 450, subpart A and included in the transportation improvement program required by 23 CFR part 450, subpart B.

(b) Except as otherwise provided by 23 CFR 450.202, projects under this subpart located outside the urbanized area boundaries should be coordinated with the appropriate local officials of the urbanized area as necessary to insure compatibility with the area's urban transportation plan.

(c) All proposed projects must be included in a program of projects approved pursuant to 23 CFR part 630, subpart A (Federal-Aid Program Approval and Authorization).

§ 810.8 Coordination.

The Federal Highway Administrator and the Urban Mass Transportation Administrator shall coordinate with each other on any projects involving public mass transit to facilitate project selection, approval and completion.

Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

§ 810.100 Purpose.

The purpose of the regulations in this subpart is to implement 23 U.S.C. 137, 142(a)(1), 142(b), and 149, which authorize various highway public mass transportation improvements and special use highway facilities as Federal-aid highway projects.

§ 810.102 Eligible projects.

Under this subpart the Federal Highway Administrator may approve on any Federal-aid system projects which facilitate the use of high occupancy vehicles and public mass transportation systems so as to increase the traffic capacity of the Federal-aid system for the movement of persons. Eligible projects include:

(a) Construction of exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes, except the construction of exclusive or preferential lanes limited to use by emergency vehicles can be approved only on the Federal-aid Interstate System;

(b) Highway traffic control devices;

(c) Passenger loading areas and facilities (including shelters) that are on or serve a Federal-aid system; and

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(d) Construction or designation of fringe and transportation corridor parking facilities. For parking facilities located in the central business district the Federal-aid project must be limited to space reserved exclusively for the parking of high occupancy vehicles used for carpools or vanpools.

§ 810.104 Applicability of other provisions.

(a) Projects authorized under § 810.102 shall be deemed to be highway projects for all purposes of title 23 U.S.C., and shall be subject to all regulations of title 23 CFR.

(b) Projects approved under this subpart on the Federal-aid Interstate System for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle lanes are excepted from the minimum four-lane requirement of 23 U.S.C. 109(b).

(c) Exclusive or preferential lanes on the Interstate System, including approaches and directly related facilities, can be constructed with Interstate construction funds only if they were approved in the 1981 Interstate Cost Estimate.

(d) The Federal proportional share of a project approved under this subpart shall be as provided in 23 U.S.C. 120 for the class of funds involved. The Federal share for Interstate substitution projects is 85 percent except for signalization projects which may be 100 percent as provided by 23 U.S.C. 120(d). The provisions of section 120(d) title 23 U.S.C. may also be applied to regularly funded projects under § 810.102 of this subpart as follows:

(1) Signalization projects.

(2) Passenger loading area and facilities which principally serve carpools and vanpools.

(3) Fringe and transportation corridor parking facilities or portions thereof which are reserved exclusively for use by carpool and vanpool passengers and vehicles.

(e) As required by section 163 of the Surface Transportation Assistance Act of 1982, approval of Federal-aid highway funding for a physical construction or resurfacing project having a carpool lane(s) within the project limits may not be granted unless the project allows the use of the carpool lane(s) by motorcycles or it is certified by the State that such use will create a safety hazard. This requirement does not apply to high occupancy vehicle lanes which exclude carpools or to carpool lanes constructed by the State without the use of Federal-aid Highway funds. The issue of the extent of utilization of these facilities including those constructed prior to January 6, 1982 with Federal-aid Highway funds is a matter for individual determination by the State Highway Agency.

§ 810.106 Approval of fringe and transportation corridor parking facilities.

(a) In approving fringe and transportation corridor parking facilities, the Federal Highway Administrator:

(1) Shall make a determination that the proposed parking facility will benefit the Federal-aid systems by improving its traffic capacity for the movement of persons;

(2) May approve acquisition of land proximate to the right-of-way of a Federal-aid highway;

(3) May approve construction of publicly-owned parking facilities on land within the right-of-way of any Federal-aid highway, including the use of the airspace above and below the established gradeline of the highway pavement, and on land, acquired with or without Federal-aid funds which is not within the right-of-way of any Federal-aid highway but which was acquired in accordance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 *et seq.*);

(4) May permit the charging of fees for the use of the facility, except that the rate of the fee shall not be in excess of that required for maintenance and operation and the cost of providing shuttle service to and from the facility (including compensation to any person for operating such facility and for providing such shuttle service);

(5) Shall determine that the State, or the political subdivision thereof, where the project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of construct-

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ing, maintaining, and operating the facility.

(6) Shall receive assurance from the State that the facility will remain in public ownershp as long as the facility is needed and that any change in ownership shall have prior FHWA approval;

(7) Shall enter into an agreement with the State, political subdivision, agency, or instrumentality governing the financing, maintenance, and operation of the parking facility; and

(8) Shall approve design standards for constructing the facility as developed in cooperation with the State highway agency.

(b) A State political subdivision, agency, or instrumentallty thereof may contract with any person to operate any parking facility constructed under this section.

(c) In authorizing projects involving fringe and transportation corridor parking facilities, the class of Federal-aid funds (primary, secondary, or urban system) used for projects under this subpart may be either funds designated for the Federal-aid system on which the facility is located or the Federal-aid system substantially benefited. For Interstate funds to be used for such eligible projects the Federal-aid Interstate system must be the system which substantially benefits. The benefiting system is that system which would have otherwise carried the high occupancy vehicle or rail passengers to their destination. Interstate construction funds may be used only where the parking facility was approved in the 1981 Interstate Cost Estimate and is constructed in conjunction with a high occupancy vehicle lane approved in the 1981 Interstate Cost Estimate.

§ 810.108 Designation of existing facilities.

(a) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing parking facilities (such as at shopping centers or other public or private locations) for fringe and transportation corridor parking.

(1) Eligible activities include the acquisition of or the initial and renewal costs for leasing existing parking space, signing of and modifications to existing facilities, trail blazer signs, and passenger loading areas and facilities.

(2) The approval criteria in 23 CFR 810.106 (a)(1), (4), (5), (7) and (8) apply to these parking facilities.

(b) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing highway lanes as high occupancy vehicle lanes.

(1) Eligible activities include preliminary engineering, signing, pavement marking, traffic control devices, minor physical modifications and initial inspection or monitoring of use.

(2) Such improvements may be approved on any public road if they facilitate more efficient use of any Federal-aid highway.

(c) Interstate construction funds may be used only where the proposed projects were approved in the 1981 Interstate Cost Estimate.

Subpart C—Making Highway Rights-of-Way Available for Mass Transit Projects

§ 810.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(g), which permits the Federal Highway Administrator to authorize a State to make available to a publicly-owned mass transit authority existing highway rights-of-way for rail or other non-highway public mass transit facilities.

§ 810.202 Applicability.

(a) The provisions of this subpart are applicable to the rights-of-way of all Federal-aid highways in which Federal-aid highway funds have participated or will participate in any part of the cost of the highway.

(b) The provisions of this subpart do not preclude acquisition of rights-of-way for use involving mass transit facilities under the provisions of subparts B and D of this part. Rights-of-way made available under this subpart may be used in combination with

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rights-of-way acquired under subparts B and D of this part.

§ 810.204 Application by mass transit authority.

A publicly-owned mass transit authority desiring to utilize land existing within the publicly acquired right-of-way of any Federal-aid highway for a rail or other nonhighway public mass transit facility may submit an application therefor to the State highway agency.

§ 810.206 Review by the State Highway Agency.

The State highway agency, after reviewing the application, may request the Federal Highway Administrator to authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility. A request shall be accompanied by evidence that utilization of the land for the proposed purposes will not impair future highway improvements or the safety of highway users.

§ 810.208 Action by the Federal Highway Administrator.

The Federal Highway Administrator may authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility, if it is determined that:

(a) The evidence submitted by the State highway agency under § 810.206 is satisfactory;

(b) The public interest will be served thereby; and

(c) The proposed action in urbanized areas is based on a continuing, comprehensive transportation planning process carried on in accordance with 23 U.S.C. 134 as described under 23 CFR part 450, subpart A.

§ 810.210 Authorization for use and occupancy by mass transit.

(a) Upon being authorized by the Federal Highway Administrator, the State shall enter into a written agreement with the publicly-owned mass transit authority relating to the use and occupancy of highway right-of-way subject to the following conditions:

(1) That any significant revision in the design, construction, or use of the facility for which the land was made available shall receive prior review and approval by the State highway agency.

(2) The use of the lands made available to the publicly-owned mass transit authority shall not be transferred to another party without the prior approval of the State highway agency.

(3) That, if the publicly-owned mass transit authority fails within a reasonable or agreed time to use the land for the purpose for which it was made available, or if it abandons the land or the facility developed, such use shall terminate. Any abandoned facility developed or under development by the publicly-owned mass transit authority which was financed all or in part with Federal funds shall be disposed of in a manner prescribed by OMB Circular A-102, Attachment N. The land shall revert to the State for its original intended highway purpose.

(b) A copy of the use and occupancy agreement and any modification under paragraphs (a) (1), (2), and (3) of this section shall be forwarded to the Federal Highway Administrator.

§ 810.212 Use to be without charge.

The use and occupancy of the lands made available by the State to the publicly-owned transit authority shall be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly-owned mass transit authority.

Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

§ 810.300 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(a)(2), which allows the Urban Mass Transportation Administrator, by delegation of the Secretary, to approve nonhighway public mass transit projects as Federal-aid urban system projects.

§ 810.302 Eligible projects.

(a) Eligible projects are those defined as nonhighway public mass transit projects in § 810.4 of this part sub-

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ject to the limitations in paragraph (b) of this section.

(b) All projects under this subpart for the construction, reconstruction, or improvement of fixed rail facilities shall be located within the urban boundaries established under 23 U.S.C. 101(a).

§ 810.304 Submission of projects.

(a) An application for an urban system nonhighway public mass transit project shall be developed by a public body as defined under the UMTA Discretionary Capital Assistance Program and shall be prepared in accordance with procedures for the same Discretionary Capital Assistance program.

(b) The application shall be submitted concurrently to the State highway agency and to the UMTA Administrator. The State highway agency, if it concurs, shall submit a request to the FHWA Administrator for a reservation of apportioned Federal-aid urban system funds. The State shall include in its submission advice that such reservation of funds will not impair its ability to comply with the provisions of section 105(d) of Pub. L. 97-424 (if a State certifies it does not need forty percent of its Federal-aid urban system funds for 4R work, and the Secretary accepts such certification, the State may spend that unneeded amount for other eligible FAUS purpose, including nonhighway public mass transit projects).

§ 810.306 Reservation of funds.

(a) The FHWA Administrator shall review the State request, determine whether sufficient Federal-aid urban system funds are available, and notify the State highway agency and the UMTA Administrator of the reservation of funds.

(b) The apportioned funds reserved for the proposed project under paragraph (a) of this section shall remain available for obligation unless the FHWA Administrator is notified that the application has been disapproved by the UMTA Administrator, or unless the responsible local officials in whose jurisdiction the project is to be located and the State highway agency jointly request the withdrawal of the project application.

§ 810.308 Approval of urban system nonhighway public mass transit projects.

(a) An urban system public mass transit project may be approved by the UMTA Administrator when it is determined that:

(1) The application and project are in accordance with the current UMTA procedures relating to discretionary capital assistance grants; and

(2) Notification has been received from the FHWA Administrator that sufficient apportioned Federal-aid urban system funds are available to finance the Federal share of the cost of the proposed project.

(b) Approval of the plans, specifications, and estimates of a nonhighway public mass transit project shall be deemed to occur on the date the UMTA Administrator approves the project application. This approval which is subject to the availability of obligation authority at the time of approval, will obligate the United States to pay its proportional share of the cost of the project.

(c) Upon approval of an urban system nonhighway public mass transit project, the UMTA Administrator will execute a grant contract covering implementation of the project.

§ 810.310 Applicability of other provisions.

The Federal proportional share of the cost of an urban system nonhighway public mass transit project approved under this subpart shall be equal to the Federal share which would have been paid if the project were a highway project as determined under 23 U.S.C. 120(a).

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SUBCHAPTER J—HIGHWAY SAFETY

PART 920—PAVEMENT MARKING DEMONSTRATION PROGRAM

Sec.
920.1 Purpose.
920.3 Objective.
920.5 Eligibility.
920.7 Procedures.
920.9 Standards.
920.11 Reports.

AUTHORITY: 23 U.S.C. 151 and 315; 49 CFR 1.48.

SOURCE: 43 FR 18668, May 2, 1978, unless otherwise noted.

§ 920.1 Purpose.

The purpose of the regulation is to set forth policies and procedures for implementing section 151 of title 23 U.S.C., "Pavement Marking Demonstration Program."

§ 920.3 Objective.

The objective of the Pavement Marking Demonstration Program is to improve the pavement marking of all highways and to demonstrate the value of such markings in providing greater vehicle and pedestrian safety.

§ 920.5 Eligibility.

Pavement Marking Demonstration Program funds are eligible for expenditure on all public highways (except Interstate) and may be used for the following:

(a) Application of markings on highways which have never been marked, or upgrading to current standards those existing markings which do not conform to the Manual on Uniform Traffic Control Devices (MUTCD),[1]

(b) Restoration of markings on highways previously marked if the previous markings have been substantially obliterated for a sufficient period to provide adequate base data for evaluation,

(c) Renewal of pavement markings placed under this program in order to maintain their effectiveness for a 2-year evaluation period,

(d) Installation of materials or devices having a design life longer than conventional paint markings,

(e) Installation of delineators,

(f) Materials, labor, and equipment rental or depreciation charges associated with the placement of pavement markings and delineators under this program, and

(g) Surveys of pavement marking and delineation needs and the collection, analysis, and evaluation of data to determine the safety benefits attributable to this program.

§ 920.7 Procedures.

(a) *Programing.* Pavement marking projects shall be included in the Federal-aid highway program developed in accordance with 23 CFR part 630, subpart A (Federal-Aid Programs Approval and Authorization). The States shall give priority to projects on highways in rural areas.

(b) *Implementation.* Pavement marking projects shall be implemented using normal Federal-aid project procedures modified to incorporate such timesaving procedures as may be developed by the State highway agency and the Federal Highway Administration (FHWA) including the use of abbreviated plans, grouping of projects, and simplified inspection procedures. Award of contracts for pavement marking projects shall be in accordance with 23 CFR part 635.

(c) *Release of funds.* Funds for this program may be released by the Federal Highway Administrator for other safety projects as specified in 23 U.S.C. 151(f). Funds will not be considered for release until all rural public highways in the State with an average daily traffic volume of 250 vehicles or more have been marked with a centerline when the paved surface is 16 feet (4.88 meters) or wider and marked with a center line and edgelines when the paved surface is 20 feet (6.10 meters) or wider. Projects using such released funds shall be developed and implemented in accordance with 23

[1]The Manual on Uniform Traffic Control Devices (Stock Number 5001-0021) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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CFR part 924 (Highway Safety Improvement Program).

[43 FR 18668, May 2, 1978, as amended at 46 FR 21157, Apr. 9, 1981; 48 FR 44066, Sept. 26, 1983]

§ 920.9 Standards.

Pavement markings or devices placed under this program shall conform to the standards in the Manual on Uniform Traffic Control Devices.[2]

§ 920.11 Reports.

Annually, each State shall submit to the FHWA Division Administrator a report (OMB 04-R2450 and RCS HHS-20-02) on the progress being made in implementing this program and the effectiveness of the improvements made under it. Each State's annual report shall be prepared as follows:

(a) *Content.* The State's report shall include: (1) Data on the progress made in completing the pavement marking demonstration effort. These data shall include current year information on the number of miles marked (centerline and edgeline); railroad-highway grade crossings, pedestrian crossings, and other special area markings completed; and the nature of the work yet to be completed in the program.

(2) An evaluation of the pavement markings placed by comparing accident data for the period following application of the markings with similar data for the period prior to application of the markings. This analysis shall consider the change in number, rate (per million vehicle miles), and severity of accidents, and present a cost-benefit ratio for the improvements accomplished under this program.

(b) *Submission.* The State's report shall be submitted to the FHWA Division Administrator by August 31 of each year until the end of the second year following completion of the total demonstration program in the State.

[2]The Manual on Uniform Traffic Control Devices (Stock Number 5001-0021) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

PART 922—SAFER OFF-SYSTEM ROADS PROGRAM

Sec.
922.1 Purpose.
922.3 Definitions.
922.5 Objective.
922.7 Eligibility.
922.9 Distribution of funds.
922.11 Federal share payable.
922.13 Standards.
922.15 Simplified procedures.

AUTHORITY: 23 U.S.C. 101(e), 219 and 315; 49 CFR 1.48.

SOURCE: 42 FR 28535, June 3, 1977, unless otherwise noted.

§ 922.1 Purpose.

To set forth policies and procedures for implementing section 219 of title 23 U.S.C., as amended, "Safer Off-System Roads."

§ 922.3 Definitions.

(a) *Local road officials*, the duly elected or appointed officials of public authorities who are responsible for the construction and maintenance of public road and street systems and whose jurisdictions include off-system roads.

(b) *Maintenance*, the preservation of the entire highway including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization.

(c) *Off-system road*, any toll-free road or street which is not on any Federal-aid system and which is under the jurisdiction of and maintained by a public authority and is open to public travel.

(d) *Open to public travel*, except during scheduled periods, extreme weather conditions, or emergencies the road section is passable by four-wheel standard passenger cars and is open to the general public for use without restrictive gates, prohibitive signs, or regulation other than generally applicable traffic control or restrictions based on size, weight, or class of registration.

(e) *Public authority*, a Federal authority or a State, county, municipality, town, township, Indian tribe, or other form of local government or in-

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strumentality thereof, with the authority to finance, build, operate or maintain toll-free highway facilities.

(f) *Roads and streets*, any element normally considered to be a necessary and integral part of a highway facility including bridges, tunnels, railroad-highway crossings, drainage structures, traffic control devices, and guardrails and other protective structures.

(g) *Roadway*, the portion of the highway cross-section, including shoulders, for vehicular use.

(h) *State*, any one of the 50 States, the District of Columbia, or Puerto Rico.

(i) *State highway department/agency* (SHA), the State highway agency which is legally empowered to administer this program in cooperation with the Federal Highway Administration (FHWA) or such other State agency as may be legally empowered and suitably equipped and organized to administer this program, as designated by the governor of the State, and as approved by the Federal Highway Administrator.

(j) *Traveled way*, the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

§ 922.5 Objective.

The principal objective of the Safer Off-System Roads (SOS) program is to construct, reconstruct, or otherwise improve off-system roads and streets with special emphasis on the implementation of highway safety improvement projects.

[44 FR 7656, Feb. 7, 1979]

§ 922.7 Eligibility.

Off-system roads are eligible for improvement under this program.

§ 922.9 Distribution of funds.

(a) Each SHA shall make funds apportioned under this program available throughout the State on a fair and equitable basis. Not less than 50 percent of the funds obligated by the State in any fiscal year for this program shall be obligated for highway safety improvement projects. Each SHA shall ensure that projects are selected, designed, and constructed in a manner which will not discriminate against any person or community on the grounds of race, religion, color, national origin, or sex.

(b) In States where the SHA is without legal authority to construct or maintain a project under this program, the SHA shall enter into a formal agreement for construction and/or maintenance of the project with appropriate local road officials or other governmental agencies which do have such legal authority.

[42 FR 28535, June 3, 1977, as amended at 44 FR 7656, Feb. 7, 1979]

§ 922.11 Federal share payable.

The Federal share payable for this program shall be in accordance with the provisions of 23 U.S.C. 120 as they apply to projects on the Federal- aid secondary system.

§ 922.13 Standards.

(a) Design standards for projects implemented under this program shall be:

(1) Those standards, policies, and guides set forth in 23 CFR part 625 (Design Standards for Highways), or

(2) Such individual standards, policies, and guides which have been or may be developed by local road officials in cooperation with the SHA and approved by the FHWA.

(b) Within the project limits, or immediately adjacent to a project, no bridge shall remain in place which has a width narrower than the approach roadway unless bridge end protection and approach signing and pavement marking are provided. Except as approved by the FHWA, no bridge shall remain in place which (1) has a width less than the approach traveled way or (2) has a width less than 20 feet on a regular school or commercial bus route.

(c) All projects shall be provided with traffic control devices in accordance with the Manual on Uniform Traffic Control Devices.[1]

[1] For sale by the Superintendent of Documents. U.S. Government Printing Office, Washington, DC 20402 (Stock Number 5001-0021). Cited at 23 CFR part 655, subpart F.

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[42 FR 28535, June 3, 1977, as amended at 51 FR 16834, May 7, 1986]

§ 922.15 Simplified procedures.

(a) The FHWA encourages the maximum use of such simplified procedures as may be appropriate for the types of projects which are expected to be implemented under this program. In addition to the guidance provided by 23 CFR 655.506(b) (Highway Safety Improvement Program) the programming of SOS funds may be simplified to eliminate the listing of projects required for a Federal-aid program by 23 CFR part 630, subpart A (Federal-Aid Programs Approval and Authorization). The Federal-aid program submission for utilization of SOS funds may consist of a narrative statement submitted by the SHA and approved by the FHWA, covering the objectives and the planned level of effort for the program period. Authorization to proceed with the work and obligation of funds will be on a project-by-project basis for work identifiable within the approved Federal-aid program.

(b) By agreement between the SHA and the FHWA, projects under this program may be administered in the same manner as certain other Federal-aid projects are administered under the terms of an approved SHA Certification, a Secondary Road Plan agreement pursuant to 23 U.S.C. 117, or such other procedures which are approved.

PART 924—HIGHWAY SAFETY IMPROVEMENT PROGRAM

Sec.
924.1 Purpose.
924.3 Definitions.
924.5 Policy.
924.7 Program structure.
924.9 Planning.
924.11 Implementation.
924.13 Evaluation.
924.15 Reporting.

AUTHORITY: 23 U.S.C. 105(f), 152, 315, and 402; sec. 203 of the Highway Safety Act of 1973, as amended; 49 CFR 1.48(b).

SOURCE: 44 FR 11544, Mar. 1, 1979, unless otherwise noted.

§ 924.1 Purpose.

The purpose of this regulation is to set forth policy for the development and implementation of a comprehensive highway safety improvement program in each State.

§ 924.3 Definitions.

(a) The term *highway,* as used in this regulation, includes in addition to those items listed in 23 U.S.C. 101(a), those facilities specifically provided for the accommodation and protection of pedestrians and bicyclists.

(b) The term *State,* as used in this regulation, means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands except that, for the purpose of implementing section 203 of the Highway Safety Act of 1973, as amended, *State* means any one of the 50 States, the District of Columbia, and Puerto Rico.

§ 924.5 Policy.

Each State shall develop and implement, on a continuing basis, a highway safety improvement program which has the overall objective of reducing the number and severity of accidents and decreasing the potential for accidents on all highways.

§ 924.7 Program structure.

The highway safety improvement program in each State shall consist of components for planning, implementation, and evaluation of safety programs and projects. These components shall be comprised of processes developed by the States and approved by the Federal Highway Administration (FHWA). Where appropriate, the processes shall be developed cooperatively with officials of the various units of local governments. The processes may incorporate a range of alternate procedures appropriate for the administration of an effective highway safety improvement program on individual highway systems, portions of highway systems and in local political subdivisions, but combined shall cover all public roads in the State.

[48 FR 44066, Sept. 26, 1983]

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§ 924.9 Planning.

(a) The planning component of the highway safety improvement program shall incorporate:

(1) A process for collecting and maintaining a record of accident, traffic, and highway data, including, for railroad-highway grade crossings, the characteristics of both highway and train traffic;

(2) A process for analyzing available data to identify highway locations, sections and elements determined to be hazardous on the basis of accident experience or accident potential;

(3) A process for conducting engineering studies of hazardous locations, sections, and elements to develop highway safety improvement projects as defined in 23 U.S.C. 101(a); and

(4) A process for establishing priorities for implementing highway safety improvement, projects, considering:

(i) The potential reduction in the number and/or severity of accidents,

(ii) The cost of the projects and the resources available,

(iii) The relative hazard of public railroad-highway grade crossings based on a hazard index formula,

(iv) Onsite inspection of public grade crossings,

(v) The potential danger to large numbers of people at public grade crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trains and/or motor vehicles carrying hazardous materials, and

(vi) Other criteria as appropriate in each State.

(b) In planning a program of safety improvement projects at railroad-highway grade crossings, special emphasis shall be given to the legislative requirement that all public crossings be provided with standard signing.

(c) The planning component of the highway safety improvement program may be financed with funds made available through 23 U.S.C. 402, 307(c), and, where applicable, 104(f).

§ 924.11 Implementation.

(a) The implementation component of the highway safety improvement program in each State shall include a process for scheduling and implementing safety improvement projects in accordance with (1) the procedures set forth in 23 CFR part 630, subpart A (Federal-Aid Program Approval and Project Authorization) and (2) the priorities developed in accordance with § 924.9. The States are encouraged to utilize the timesaving procedures incorporated in FHWA directives for the minor type of work normal to highway safety improvement projects.

(b) Funds apportioned under 23 U.S.C. 152, Hazard Elimination Program, are to be used to implement highway safety improvement projects on any public road other than Interstate.

(c) Funds apportioned under section 203(b) of the Highway Safety Act of 1973, as amended, Rail-Highway Crossings, are to be used to implement railroad-highway grade crossing safety projects on any public road. At least 50 percent of the funds apportioned under section 203(b) must be made available for the installation of grade crossing protective devices. The railroad share, if any, of the cost of grade crossing improvements shall be determined in accordance with 23 CFR part 646, subpart B (Railroad-Highway Projects).

(d) Highway safety improvement projects may be implemented on the Federal-aid system with funds apportioned under 23 U.S.C. 104(b), and with funds apportioned under section 104(b)(1) of the Federal-Aid Highway Act of 1978 and section 103(a) of the Highway Improvement Act of 1982, if excess to Interstate System needs.

(e) Funds apportioned under 23 U.S.C. 219, Safer Off-System Roads, may be used to implement highway safety improvement projects on public roads which are not on a Federal-aid system.

(f) Major safety defects on bridges, including related approach improvements, may be corrected as part of a bridge rehabilitation project on any public road with funds apportioned under 23 U.S.C. 144, if such project is considered eligible under 23 CFR part 650, subpart D (Special Bridge Replacement Program).

(g) Award of contracts for highway safety improvement programs shall be in accordance with 23 CFR part 635.

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[48 FR 44066, Sept. 26, 1983]

§ 924.13 Evaluation.

(a) The evaluation component of the highway safety improvement progam in each State shall include a process for determining the effect that highway safety improvement projects have in reducing the number and severity of accidents and potential accidents, including:

(1) The cost of, and the safety benefits derived from the various means and methods used to mitigate or eliminate hazards,

(2) A record of accident experience before and after the implementation of a highway safety improvement, project, and

(3) A comparison of accident numbers, rates, and severity observed after the implementation of a highway safety improvement project with the accident numbers, rates, and severity expected if the improvement had not been made.

(b) The findings resulting from the evaluation process shall be incorporated as basic source data in the planning process outlined in § 924.9(a).

(c) The evaluation component may be financed with funds made available through 23 U.S.C. 402, 307(c), and, where applicable, 104(f). In addition, when highway safety improvement projects are undertaken with funds apportioned under 23 U.S.C. 152 or section 203 of the Highway Safety Act of 1973, as amended, these funds may also be used to evaluate the improvements.

§ 924.15 Reporting.

(a) Each State shall submit to the FHWA Division Administrator no later than August 31 of each year a report (OMB Number 04-R2450) covering the State's highway safety improvement program during the previous July 1 through June 30 period. In its annual report, the State shall report on the progress made in implementing the hazard elimination program and the grade crossing improvement program, and shall evaluate the effectiveness of completed highway safety improvement projects in these programs.

(b) The preparation of the State's annual report may be financed with funds made available through 23 U.S.C. 402, 307(c), and, where applicable, 104(f).

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CHAPTER II—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AND FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—[RESERVED]

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SUBCHAPTER A—[RESERVED]

SUBCHAPTER B—GUIDELINES

PART 1204—UNIFORM GUIDELINES FOR STATE HIGHWAY SAFETY PROGRAMS

AUTHORITY: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

Subpart A—[Reserved]

Subpart B—Guidelines

§ 1204.4 Highway Safety Program Guidelines.

The Uniform Guidelines for State Highway Safety Programs are set forth in this subpart.

HIGHWAY SAFETY PROGRAM GUIDELINE NUMBERS AND TITLES

No.
1 Periodic motor vehicle inspection.
2 Motor vehicle registration.
3 Motorcycle safety.
4 Driver education.
5 Drive licensing.
6 Codes and laws.
7 Traffic courts.
8 Alcohol in relation to highway safety.
9 Identification and surveillance of accident locations.
10 Traffic records.
11 Emergency medical services.
12 Highway design, construction and maintenance.
13 Traffic engineering services.
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16 Debris hazard control and cleanup.
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18 Accident investigation and reporting.

SUPPLEMENT A—HIGHWAY SAFETY PROGRAM MANUAL—VOLUME 0—PLANNING AND ADMINISTRATION.
SUPPLEMENT B—VOLUME 102—HIGHWAY SAFETY PLAN.
SUPPLEMENT C—[RESERVED]
SUPPLEMENT D—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID.
SUPPLEMENT E—ENVIRONMENTAL IMPACT REVIEW REQUIREMENTS FOR ANNUAL STATE AND COMMUNITY HIGHWAY SAFETY WORK PROGRAMS (AWP'S).
SUPPLEMENT F—DISTRIBUTION AND RELEASE OF AUDIT REPORTS ON STATE PROGRAM ADMINISTRATION.
SUPPLEMENT G—DISPOSITION OF EXTERNAL AUDIT FINDINGS RELATED TO STATE AND COMMUNITY HIGHWAY SAFETY PROGRAM MANAGEMENT.
SUPPLEMENT H—GUIDELINES FOR THE DESIGNATION OF A STATE AGENCY RESPONSIBLE FOR HIGHWAY SAFETY.
SUPPLEMENT I—USE OF SECTION 402 FUNDS FOR TRAINING.

HIGHWAY SAFETY PROGRAM GUIDELINE No. 1

PERIODIC MOTOR VEHICLE INSPECTION

Each State should have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do occur, and should require the owner to correct such conditions.

I. A model program would provide, at a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time as may be designated under an experimental, pilot or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Traffic Safety Administration.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. Class of vehicle.
2. Date of inspection.
3. Make of vehicle.
4. Model year.

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5. Vehicle identification number.
6. Defects by category.
7. Identification of inspector.
8. Mileage or odometer reading.

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 2

Motor Vehicle Registration

Each State should have a motor vehicle registration program.

I. A model registration program would be such that every vehicle operated on public highways is registered and the following information is readily available for each vehicle:

A. Make.
B. Model year.
C. Identification number (rather than motor number).
D. Type of body.
E. License plate number.
F. Name of current owner.
G. Current address of owner.
H. Registered gross laden weight of every commercial vehicle.

II. Each program should have a records system that provides at least the following services.

A. Rapid entry of new data into the records or data system.
B. Controls to eliminate unnecessary or unreasonable delay in obtaining data.
C. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.
D. Data available for statistical compilation as needed by authorized sources.
E. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 3

Motorcycle Safety

For the purposes of this guideline a motorcycle is defined as any motordriven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

Each State should have a motorcycle safety program to insure that only persons physically and mentally qualified will be licensed to operate a motorcycle; that protective safety equipment for drivers and passengers will be worn; and that the motorcycle meets guidelines for safety equipment.

I. The program should provide as a minimum that:

A. Each person who operates a motorcycle:

1. Passes an examination or reexamination designed especially for motorcycle operation.

2. Holds a license issued specifically for motorcycle use or a regular license endorsed for each purpose.

B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

C. Each motorcycle passenger wears an approved safety helmet, and is provided with a seat and footrest.

D. Each motorcycle is equipped with a rear-view mirror.

E. Each motorcycle is inspected at the time it is initially registered and at least annually thereafter, or in accordance with the State's inspection requirements.

II. The program should be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

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HIGHWAY SAFETY PROGRAM GUIDELINE No. 4

DRIVER EDUCATION

Each State, in cooperation with its political subdivisions, should have a driver education and training program. This program should provide at least that:

I. There is a driver education program available to all youths of licensing age which:

A. Is taught by instructors certified by the State as qualified for these purposes.

B. Provides each student with practice driving and instruction in at least the following:

1. Basic and advanced driving techniques including techniques for handling emergencies.

2. Rules of the road, and other State laws and local motor vehicle laws and ordinances.

3. Critical vehicle systems and subsystems requiring preventive maintenance.

4. The vehicle, highway and community features:

a. That aid the driver in avoiding crashes,

b. That protect him and his passengers in crashes,

c. That maximize the salvage of the injured.

5. Signs, signals, and highway markings and highway design features which require understanding for safe operation of motor vehicles.

6. Differences in characteristics of urban and rural driving including safe use of modern expressways.

7. Pedestrian safety.

C. Encourages students participating in the program to enroll in first aid training.

II. There is a State research and development program including adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use.

III. There is a program for adult driver training and retraining.

IV. Commercial driving schools are licensed and commercial driving instructors are certified in accordance with specific criteria adopted by the State.

V. The program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM GUIDELINE No. 5

DRIVER LICENSING

Each State should have a driver licensing program: (a) To insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. A model program would provide, as a minimum, that:

I. Each driver holds only one license, which identifies the type(s) of vehicle(s) he is authorized to drive.

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.

2. Ability to read and comprehend traffic signs and symbols.

3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise in the operation of an automobile, and other driver responsibilities.

4. Visual acuity, which must meet or exceed State guidelines.

B. Is reexamined at an interval not to exceed 4 years, for at least visual acuity and knowledge of rules of the road.

IV. A record on each driver should be maintained which includes positive identification, current address, and driving history. In addition, the record system should provide the following services:

A. Rapid entry of new data into the system.

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B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

D. Ready availability of data for statistical compilation as needed by authorized sources.

E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license should be issued for a specific term, and should be renewed to remain valid. At time of issuance or renewal each driver's record should be checked.

VI. There should be a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There should be:

A. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

B. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, welfare or other benefits or exemptions for the blind or nearly blind.

C. A medical advisory board or equivalent allied health professional unit composed of qualified personnel to advise the driver license agency on medical criteria and vision guidelines.

VIII. The program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary. The evaluation should attempt to ascertain the extent to which driving without a license occurs.

Highway Safety Program Guideline No. 6

CODES AND LAWS

Each State should develop and implement a program to achieve uniformity of traffic codes and laws throughout the State. The program should provide at least that:

I. There is a plan to achieve uniform rules of the road in all of its jurisdictions.

II. There is a plan to make the State's unified rules of the road consistent with similar unified plans of other States. Toward this end, each State should undertake and maintain continuing comparisons of all State and local laws, statutes and ordinaces with the comparable provisions of the Rules of the Road section of the Uniform Vehicle Code.

Highway Safety Program Guideline No. 7

TRAFFIC COURTS

Each State in cooperation with its political subdivisions should have a program to assure that all traffic courts in it complement and support local and statewide traffic safety objectives. The program should provide at least that:

I. All convictions for moving traffic violations should be reported to the State traffic records system.

II. Program Recommendations.

In addition the State should take appropriate steps to meet the following recommended conditions:

A. All individuals charged with moving hazardous traffic violations are required to appear in court.

B. Traffic courts are financially independent of any fee system, fines, costs, or other revenue such as posting or forfeiture of bail or other collateral resulting from processing violations of motor-vehicle laws.

C. Operating procedures, assignment of judges, staff and quarters insure reasonable availability of court services for alleged traffic offenders.

D. There is a uniform accounting system regarding traffic violation notices, collection of fines, fees and costs.

E. There are uniform rules governing court procedures in traffic cases.

F. There are current manuals and guides for administration, court procedures, and accounting.

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Highway Safety Program Guideline No. 8

Alcohol in Relation to Highway Safety

Each State, in cooperation with its political subdivisions, should develop and implement a program to achieve a reduction in those traffic accidents arising in whole or in part from persons driving under the influence of alcohol. The program should provide at least that:

I. There is a specification by the State of the following with respect to alcohol related offenses:

A. Chemical test procedures for determining blood-alcohol concentrations.

B. (1) The blood-alcohol concentrations, not higher than .10 percent by weight, which define the terms "intoxicated" or "under the influence of alcohol," and

(2) A provision making it either unlawful, or presumptive evidence of illegality, if the blood-alcohol concentration of a driver equals or exceeds the limit so established.

II. Any person placed under arrest for operating a motor vehicle while intoxicated or under the influence of alcohol is deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood.

III. To the extent practicable, there are quantitative tests for alcohol:

A. On the bodies of all drivers and adult pedestrians who die within 4 hours of a traffic accident.

B. On all surviving drivers in accidents fatal to others.

IV. There are appropriate procedures established by the State for specifying:

A. The qualifications of personnel who administer chemical tests used to determine blood, breath, and other body alcohol concentrations.

B. The methods and related details of specimen selection, collection, handling, and analysis.

C. The reporting and tabulation of the results.

V. The program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 9

Identification and Surveillance of Accident Locations

Each State, in cooperation with county and other local governments, should have a program for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

I. A model program would provide, as a minimum, that:

A. There is a procedure for accurate identification of accident locations on all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program should be periodically evaluated by the State and the Federal Highway Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 10

Traffic Records

Each State, in cooperation with its political subdivisions, should maintain a Statewide traffic records system.

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A model program would provide, as a minimum that:

I. Information on vehicles and system capabilities should include (conforms to Motor Vehicle Registration guideline):

A. Make.
B. Model year.
C. Identification number (rather than motor number).
D. Type of body.
E. License plate number.
F. Name and current owner.
G. Current address of owner.
H. Registered gross laden weight of every commercial vehicle.
I. Rapid entry of new data into the records or data system.
J. Controls to eliminate unnecessary or unreasonable delay in obtaining data.
K. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.
L. Data available for statistical compilation as needed by authorized sources.
M. Identification and ownership of vehicles sought for enforcement or other operational needs.

II. Information on drivers and system capabilities should include (conforms to Driver Licensing guideline):

A. Positive identification.
B. Current address.
C. Driving history.
D. Rapid entry of new data into the system.
E. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.
F. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.
G. Ready availability of data for statistical compilation as needed by authorized sources.
H. Ready identification of drivers sought for enforcement or other operational needs.

III. Information on types of accidents should include:

A. Identification of location in space and time.
B. Identification of drivers and vehicles involved.
C. Type of accident.
D. Description of injury and property damage.
E. Description of environmental conditions.
F. Causes and contributing factors, including the absence of or failure to use available safety equipment.

IV. There should be methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and accident experience by specified groups.

V. All traffic records relating to accidents collected hereunder should be open to the public in a manner which does not identify individuals.

VI. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 11

Emergency Medical Services

Each State, in cooperation with its local political subdivisions, should have a program to ensure that persons involved in highway accidents receive prompt emergency medical care under the range of emergency conditions encountered. The program should provide, as a minimum, that:

I. There are training, licensing, and related requirements (as appropriate) for ambulance and rescue vehicle operators, attendants, drivers, and dispatchers.

II. There are requirements for types and number of emergency vehicles including supplies and equipment to be carried.

III. There are requirements for the operation and coordination of ambulances and other emergency care systems.

IV. There are first aid training programs and refresher courses for emergency service personnel, and the general public is encouraged to take first aid courses.

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V. There are criteria for the use of two-way communications.

VI. There are procedures for summoning and dispatching aid.

VII. There is an up-to-date, comprehensive plan for emergency medical services, including:

A. Facilities and equipment.

B. Definition of areas of responsibility.

C. Agreements for mutual support.

D. Communications systems.

VIII. This program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 12

Highway design, construction and maintenance

Every State in cooperation with county and local governments should have a program of highway design, construction, and maintenance to improve highway safety. Guidelines applicable to specific programs are those issued or endorsed by the Federal Highway Administrator.

I. The program should provide, as a minimum that:

A. There are design guidelines relating to safety features such as sight distance, horizontal and vertical curvature, spacing of decision points, width of lanes, etc., for all new construction or reconstruction, at least on expressways, major streets and highways, and through streets and highways.

B. Street systems are designated to provide a safe traffic environment for pedestrians and motorists when subdivisions and residential areas are developed or redeveloped.

C. Roadway lighting is provided or upgraded on a priority basis at the following locations:

1. Expressways and other major arteries in urbanized areas.

2. Junctions of major highways in rural areas.

3. Locations or sections of streets and highways having high ratios of night-to-day motor vehicle and/or pedestrian accidents.

4. Tunnels and long underpasses.

D. There are guidelines for pavement design and construction with specific provisions for high skid resistance qualities.

E. There is a program for resurfacing or other surface treatment with emphasis on correction of locations or sections of streets and highways with low skid resistance and high or potentially high accident rates susceptible to reduction by providing improved surfaces.

F. There is guidance, warning and regulation of traffic approaching and traveling over construction or repair sites and detours.

G. There is a systematic identification and tabulation of all rail-highway grade crossings and a program for the elimination of hazards and dangerous crossings.

H. Roadways and the roadsides are maintained consistent with the design guidelines which are followed in construction, to provide safe and efficient movement of traffic.

I. Hazards within the highway right-of-way are identified and corrected.

J. There are highway design and construction features wherever possible for accident prevention and survivability including at least the following:

1. Roadsides clear of obstacles, with clear distance being determined on the basis of traffic volumes, prevailing speeds, and the nature of development along the street or highway.

2. Supports for traffic control devices and lighting that are designed to yield or break away under impact wherever appropriate.

3. Protective devices that afford maximum protection to the occupants of vehicles wherever fixed objects cannot reasonably be removed or designed to yield.

4. Bridge railings and parapets which are designed to minimize severity of impact, to retain the vehicle, to redirect the vehicle so that it will move parallel to the roadway, and to minimize danger to traffic below.

5. Guardrails, and other design features which protect people from out-of-control vehicles at locations of special hazard such as playgrounds, schoolyards and commercial areas.

K. There is a post-crash program which includes at least the following:

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1. Signs at freeway interchanges directing motorists to hospitals having emergency care capabilities.

2. Maintenance personnel trained in procedures for summoning aid, protecting others from hazards at accident sites, and removing debris.

3. Provisions for access and egress for emergency vehicles to freeway sections where this would significantly reduce travel time without reducing the safety benefits of access control.

II. This program should be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the Federal Highway Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 13

Traffic Engineering Services

Each State, in cooperation with its political subdivisions, and each Federal department or agency which controls highways open to public travel or supervises traffic operations, should have a program for applying traffic engineering measures and techniques, including the use of traffic control devices, to reduce the number and severity of traffic accidents.

I. The program as a minimum should consist of:

A. A comprehensive manpower development plan to provide the necessary traffic engineering capability, including:

1. Provisions for supplying traffic engineering assistance to those jurisdictions unable to justify a full-time traffic engineering staff.

2. Provisions for upgrading the skills of practicing traffic engineers, and providing basic instruction in traffic engineering techniques to subprofessionals and technicians.

B. Utilization of traffic engineering principles and expertise in the planning, design, construction, and maintenance of the public roadways, and in the application of traffic control devices.

C. A traffic control devices plan including:

1. An inventory of all traffic control devices.

2. Periodic review of existing traffic control devices, including a systematic upgrading of substandard devices to conform with guidelines issued or endorsed by the Federal Highway Administrator.

3. A maintenance schedule adequate to insure proper operation and timely repair of control devices, including daytime and nighttime inspections.

4. Where appropriate, the application and evaluation of new ideas and concepts in applying control devices and in the modification of existing devices to improve their effectiveness through controlled experimentation.

D. An implementation schedule to utilize traffic engineering manpower to:

1. Review road projects during the planning, design, and construction stages to detect and correct features that may lead to operational safety difficulties.

2. Install safety-related improvements as a part of routine maintenance and/or repair activities.

3. Correct conditions noted during routine operational surveillance of the roadway system to rapidly adjust for the changes in traffic and road characteristics as a means of reducing accident frequency or severity.

4. Conduct traffic engineering analyses of all high accident locations and development of corrective measures.

5. Analyze potentially hazardous locations, such as sharp curves, steep grades, and railroad grade crossings and develop appropriate countermeasures.

6. Identify traffic control needs and determine short and long range requirements.

7. Evaluate the effectiveness of specific traffic control measures in reducing the frequency and severity of traffic accidents.

8. Conduct traffic engineering studies to establish traffic regulations such as fixed or variable speed limits.

II. This Program should be periodically evaluated by the State, or appropriate Federal department or agency where applicable, and the Federal Highway Administration should be provided with an evaluation summary.

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HIGHWAY SAFETY PROGRAM GUIDELINE No. 14

PEDESTRIAN SAFETY

Every State in cooperation with its political subdivisions should develop and implement a program to insure the safety of pedestrians of all ages. A model program would provide, as a minimum that:

I. There should be a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There should be established Statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations, and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There should be established a Statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content should include emphasis on:

(1) Behavior characteristics of the three types of pedestrians most commonly involved in accidents with vehicles: (i) Children; (ii) persons under the influence of alcohol; (iii) the elderly;

(2) Accident avoidance techniques that take into account the hazardous conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content should be included in:

(1) All driver education and training courses;

(2) Driver improvement courses; and

(3) Driver license examinations.

IV. There should be statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near the streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There should be a statewide program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There should be a statewide program for establishment and enforcement of traffic regulations designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program should be periodically evaluated by the States, and the National Highway Traffic Safety Administration and the Federal Highway Administration should be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM GUIDELINE No. 15

POLICE TRAFFIC SERVICES

Every State in cooperation with its political subdivisions should have a program to insure efficient and effec-

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tive police services utilizing traffic patrols: To enforce traffic laws; to prevent accidents; to aid the injured; to document the particulars of individual accidents; to supervise accident cleanup and to restore safe and orderly traffic movement.

I. The program should provide as a minimum that there are:

A. Uniform training procedures in all aspects for police supervision of vehicular and pedestrian traffic related to highway safety, including use of appropriate instructional materials and techniques for recruit, advanced, inservice, and special course training.

B. Periodic in-service training courses for uniformed and other police department employees assigned to traffic duties dealing with:

(1) Administration and management of police, vehicular and pedestrian traffic services.

(2) Analysis, interpretation and use of traffic records data.

(3) Insurance of prompt reliable post-accident response, including skilled aid to the injured.

(4) Accomplishing postaccident responsibilities.

C. Procedures for the selective assignment of trained police personnel to supervise vehicular and pedestrian traffic duties including enforcement patrols in hazardous or congested areas based on: time and location of

(1) Traffic volume.

(2) Accident experience.

(3) Traffic violation frequency.

(4) Emergency and service needs.

D. Procedures for investigating, recording and reporting accidents pertaining to:

(1) The human, vehicular, and highway causative factors in individual accidents.

(2) The human, vehicular, and highway causative factors of injuries and deaths, including failure to use safety belts.

(3) The efficiency of the postaccident response.

E. Procedures for recognizing and reporting, to the appropriate agencies hazardous highway defects and conditions, including:

(1) Condition of drivers;

(2) Operational condition of motor vehicles;

(3) Defective signs, signals, controls, construction and maintenance deficiencies.

a. Data listed in (3) above should be readily available to the public.

F. Appropriate agreements by the State and its political subdivisions regarding primary responsibility and authority for police traffic supervision, and cooperative responsibilities where concurrent jurisdictional boundaries and problems exist, and appropriate participation of each law enforcement agency in the comprehensive highway safety program of the State and its political subdivisions.

II. The programs should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

III. Nothing in this guideline should preclude the use of personnel other than police officers in carrying out the minimum requirements in accordance with laws and policies established by State and/or local governments.

Highway Safety Program Guideline No. 16

Debris Hazard Control and Cleanup

Each State in cooperation with its political subdivisions should have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.

I. The program should provide as a minimum that:

A. Operational procedures are established and implemented for:

(1) Enabling rescue and salvage equipment personnel to get to the scene of accidents rapidly and to operate effectively on arrival:

a. On heavily traveled freeways and other limited access roads;

b. In other types of locations where wreckage or spillage of hazardous materials on or adjacent to highways endangers the public health and safety;

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(2) Extricating trapped persons from wreckage with reasonable care—both to avoid injury or aggravating existing injuries;

(3) Warning approaching drivers and detouring them with reasonable care past hazardous wreckage or spillage;

(4) Safe handling of spillage or potential spillage of materials that are:

a. Radioactive

b. Flammable

c. Poisonous

d. Explosive

e. Otherwise hazardous.

(5) Removing wreckage or spillage from roadways or otherwise causing the resumption of safe, orderly traffic flow.

B. Adequate numbers of rescue and salvage personnel are properly trained and retrained in the latest accident cleanup techniques.

C. A communications system is provided, adequately equipped and manned, to provide coordinated effort in incident detection, and the notification, dispatch, and response of appropriate services.

II. The program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

Highway Safety Program Guideline No. 17

Pupil Transportation Safety

I. *Scope.* This guideline establishes minimum requirements for a State highway safety program for pupil transportation safety; including the identification, operation, and maintenance of schoolbuses; training of personnel; and administration.

II. *Purpose.* The purpose of this guideline is to reduce, to the greatest extent possible, the danger of death or injury to schoolchildren while they are being transported to and from school.

III. *Definitions.* "Type I school vehicle" means any motor vehicle with motive power, except a trailer, used to carry more than 16 pupils to and from school. This definition includes vehicles that are at any time used to carry schoolchildren and school personnel exclusively, and does not include vehicles that only carry schoolchildren along with other passengers as part of the operations of a common carrier.

"Type II school vehicle" means any motor vehicle used to carry 16 or less pupils to or from school. This does not include private motor vehicles used to carry members of the owner's household.

IV. *Requirements.* Each State, in cooperation with its school districts and its political subdivisions, should have a comprehensive pupil transportation safety program to assure that school vehicles are operated and maintained so as to achieve the highest possible level of safety.

A. *Administration.* 1. There should be a single State agency having primary administrative responsibility for pupil transportation, and employing at least one full-time professional to carry out its responsibilities for pupil transportation.

2. The responsible State agency should develop an operating system for collecting and reporting information needed to improve the safety of school vehicle operations, in accordance with Safety Program Guideline No. 10, "Traffic Records," section 204.4.

B. *Identification and equipment of school vehicles.* Each State should establish and maintain compliance with the following requirements for identification and equipment of school vehicles. The use of stop arms is at the option of the State.

1. Type I school vehicles should:

a. Be identified with the words, "School Bus," printed in letters not less than 8 inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle;

b. Be painted National School Bus Glossy Yellow, in accordance with the colorimetric specification of Federal Guideline No. 595a, Color 13432, except that the hood should be either that color or lusterless black, matching Federal Guideline No. 595a, Color 37038;

c. Have bumpers of glossy black, matching Federal Guideline No. 595a,

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Color 17038; unless, for increased night visibility, they are covered with a retroflective material;

d. Be equipped with a system of signal lamps that conforms to the schoolbus requirements of Federal Motor Vehicle Safety Standard 108, 49 CFR 571.21; and

e. Have a system of mirrors that will give the seated driver a view of the roadway to each side of the bus, and of the area immediately in front of the front bumper, in accordance with the following procedure:

When a rod, 30 inches long, is placed upright on the ground at any point along a traverse line 1 foot forward of the forwardmost point of a school bus, and extending the width of the bus, at least 7½ inches of the length of the rod should be visible to the driver, either by direct view or by means of an indirect visibility system.

2. Type I school vehicles that are operated by a privately or publicly owned local transit system, and used for regular common carrier transit route service as well as special school route service, should meet all of the requirements of this guideline, except as follows:

a. Such vehicles need not be painted yellow and black as required by paragraphs 1(b) and 1(c) of this section.

b. In lieu of the requirements of paragraph 1(a) of this section, such vehicles should, while transporting children to and from school, be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front should have the words "School Bus" printed in black letters not less than 6 in high, on a background of national school bus glossy yellow, as specified in paragraph 1(b) of this section. The sign on the rear should be at least 10 ft^2 in size and should be painted national school bus glossy yellow, as specified in paragraph 1(b) of this section, and have the words "School Bus" printed in black letters not less than 8 in high. Both the 6-in and 8-in letters should be Series "D" as specified in the Guideline Alphabets—Federal Highway Administration, 1966.

c. Where such vehicles are used only in places where use of warning signal lamps is prohibited, they need not be equipped with the signal lamps required by paragraph 1(d) of this section.

3. Any school vehicle meeting the identification requirements of 1.a–d above that is permanently converted for use wholly for purposes other than transporting pupils to or from school should be painted a color other than National School Bus Glossy Yellow, and should have the stop arms, and equipment required by section IV.B.1.d, removed.

4. Type I school vehicles being operated on a public highway and transporting primarily passengers other than school pupils should have the words, "School Bus," covered, removed, or otherwise concealed, and the stop arms and equipment required by section IV.B.1.d should not be operable through the usual controls.

5.a. Type II school vehicles should either:

(1) Comply with all the requirements for Type I school vehicles; or

(2) Be of a color other than National School Bus Glossy Yellow, have none of the equipment specified in IV.B.1.d, and not have the words, "School Bus," in any location on the exterior of the vehicle, or in any interior location visible to a motorist.

b. The State should establish conditions under which one or the other of the above two specifications for Type II vehicles should apply.

C. *Operation.* Each State should establish and maintain compliance with the following requirements for operating school vehicles:

1. *Personnel.* a. Each State should develop a plan for selecting, training, and supervising persons whose primary duties involve transporting school pupils, in order to assure that such persons will attain a high degree of competence in, and knowledge of, their duties.

b. Every person who drives a Type I or Type II school vehicle occupied by school pupils should, as a minimum:

(1) Have a valid State driver's license to operate such a vehicle(s);

(2) Meet all special physical, mental, and moral requirements established by the State agency having primary responsibility for pupil transportation; and

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(3) Be qualified as a driver under the Motor Carrier Safety Regulations of the Federal Highway Administration 49 CFR 391, if he or his employer is subject to those regulations.

2. *Pupil instruction.* At least twice during each school year, each pupil who is transported in a school vehicle should be instructed in safe riding practices, and participate in emergency evacuation drills.

3. *Vehicle operation.* a. Each State should develop plans for minimizing highway use hazards to school vehicle occupants, other highway users, pedestrians, and property, including but not limited to:

(1) Careful planning and annual review of routes for safety hazards;

(2) Planning routes to assure maximum use of buses, and avoid standees;

(3) Providing loading and unloading zones off the main traveled part of highways, whenever it is practicable to do so;

(4) Establishing restricted loading and unloading areas for school buses at, or near schools;

(5) Requiring the driver of a vehicle meeting or overtaking a schoolbus that is stopped on a highway to take on or discharge pupils, and on which the red warning signals specified in IV.B.1.d are in operation, to stop his vehicle before it reaches the school bus and not proceed until the warning signals are deactivated; and

(6) Prohibiting, by legislation or regulation, operation of any vehicle displaying the words, "School Bus," unless it meets the equipment and identification requirements of this guideline.

b. Use of flashing warning signal lamps while loading or unloading pupils should be at the option of the State. Use of red warning signal lamps for any other purpose, and at any time other than when the school vehicle is stopped to load or discharge passengers should be prohibited.

c. When vehicles are equipped with stop arms, such devices should be operated only in conjunction with red signal lamps.

d. *Seating.* (1) Seating should be provided that will permit each occupant to sit in a seat in a plan view lateral location, intended by the manufacturers to provide seating accommodation for a person at least as large as a 5th percentile adult female, as defined in 49 CFR 571.3.

(2) Bus routing and seating plans should be coordinated so as to eliminate standees when a school vehicle is in motion.

(3) There should be no auxiliary seating accommodations such as temporary or folding jump seats in school vehicles.

(4) Drivers of school vehicles equipped with lap belts should be required to wear them whenever the vehicle is in motion.

(5) Passengers in Type II school vehicles equipped with lap belts should be required to wear them whenever the vehicle is in motion.

D. *Vehicle maintenance.* Each State should establish and maintain compliance with the following requirements for vehicle maintenance:

1. School vehicles should be maintained in safe operating conditions through a systematic preventive maintenance program.

2. All school vehicles should be inspected at least semiannually, in accordance with Highway Safety Program Manual Vol. 1, published by the Department of Transportation January 1969. School vehicles subject to the Motor Carrier Safety Regulations of the Federal Highway Administration should be inspected and maintained in accordance with those regulations (49 CFR parts 393 and 396).

3. School vehicle drivers should be required to perform daily pretrip inspections of their vehicles, and to report promptly and in writing any defects or deficiencies discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown. Pretrip inspection and condition reports for school vehicles subject to the Motor Carrier Safety Regulations of the Federal Highway Administration should be performed in accordance with those regulations (49 CFR 392.7, 392.8, and 396.7).

V. *Program evaluation.* The pupil transportation safety program should be evaluated at least annually by the State agency having primary administrative responsibility for pupil transportation. The National Highway

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Traffic Safety Administration should be furnished a summary of each evaluation.

SUMMARY OF COMMENTS AND RECOMMENDATIONS MADE BY THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE ON THE PUPIL TRANSPORTATION SAFETY GUIDELINE

As required by statute, the National Highway Safety Advisory Committee reviewed the draft Pupil Transportation Safety Guideline and made comments and recommendations to the Secretary of Transportation in May and November 1970, summarized as follows:

1. The Committee recommended that the guideline be issued initially to cover "pupil transportation safety" but that the guideline should be expanded in the future to cover all youth transportation not under the jurisdiction of the Department of Transportation's Bureau of Motor Carrier Safety.

2. The Committee favored a "no standee" provision.

3. The Committee supported the uniform warning system for schoolbuses but recommended that warning systems (flashing lights) to control traffic should not be limited to larger buses (Type I vehicles).

4. To allow the use of highly reflective colors to ward off excessive solar radiation, the Committee recommended that schoolbus roofs be permitted to be some color other than schoolbus yellow. The Committee also recommended the deletion of the provisions requiring bumpers to be painted "glossy black" to allow the use of rubber or other innovative bumper devices not susceptible to being painted.

5. Because of the inadequate and incompatible seat and body structure designs of schoolbuses, the Committee approved the omission of seat belts for passengers. The Committee also recommended that passengers in Type II vehicles be required to use belts only if so equipped.

6. The Committee recommended that monitors or proctors be required on each schoolbus to aid in loading and unloading the bus and to free the driver from tending the passengers while driving.

7. The Committee favored a provision in the guideline calling for the periodic reevaluation or requalification of schoolbus drivers.

8. To allow States more flexibility in vehicle inspection programs, the Committee recommended that schoolbuses be inspected "periodically" rather than "semiannually."

Highway Safety Program Guideline No. 18

ACCIDENT INVESTIGATION AND REPORTING

I. *Scope.* This guideline establishes the requirement that each State should have a highway safety program for accident investigation and reporting.

II. *Purpose.* The purpose of this guideline is to establish a uniform, comprehensive motor vehicle traffic accident investigation program for gathering information—who, what, when, where, why, and how—on motor vehicle traffic accidents and associated deaths, injuries, and property damage; and entering the information into the traffic records system for use in planning, evaluating, and furthering highway safety program goals.

III. *Definitions.* For the purpose of this guideline the following definitions apply:

Accident—an unintended event resulting in injury or damage, involving one or more motor vehicles on a highway that is publicly maintained and open to the public for vehicular travel.

Highway—the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Motor vehicle—any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

IV. *Requirements.* Each State, in cooperation with its political subdivisions, should have an accident investigation program. A model program would be structured as follows:

A. *Administration.* 1. There should be a State agency having primary re-

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sponsibility for administration and supervision of storing and processing accident information, and providing information needed by user agencies.

2. There should be employed at all levels of government adequate numbers of personnel, properly trained and qualified, to conduct accident investigations and process the resulting information.

3. Nothing in this guideline should preclude the use of personnel other than police officers, in carrying out the requirements of this guideline in accordance with laws and policies established by State and/or local governments.

4. Procedures should be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of accidents and subsequent processing of resulting data.

5. Each State should establish procedures for entering accident information into the statewide traffic records system established pursuant to Highway Safety Program Guideline No. 10. Traffic Records, and for assuring uniformity and compatibility of this data with the requirements of the system, including as a minimum:

a. Use of uniform definitions and classifications acceptable to the National Highway Traffic Safety Administration and identified in the Highway Safety Program Manual.

b. A guideline format for input of data into the statewide traffic records system.

c. Entry into the statewide traffic records system of information gathered and submitted to the responsible State agency.

B. *Accident reporting.* Each State should establish procedures which require the reporting of accidents to the responsible State agency within a reasonable time after occurrence.

C. *Owner and driver reports.* 1. In accidents involving only property damage, where the vehicle can be normally and safely driven away from the scene, the drivers or owners of vehicles involved should be required to submit a written report consistent with State reporting requirements, to the responsibile State agency. A vehicle should be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner, without further damage or hazard tc itself, other traffic elements, or the roadway. Each report so submitted should include, as a minimum, the following information relating to the accident:

a. Location.

b. Time.

c. Identification of driver(s).

d. Identification of pedestrian(s), passenger(s), or pedal-cyclist(s).

e. Identification of vehicle(s).

f. Direction of travel of each unit.

g. Other property involved.

h. Environmental conditions existing at the time of the accident.

i. A narrative description of the events and circumstances leading up to the time of impact, and immediately after impact.

2. In all other accidents, the drivers or owners of motor vehicles involved should be required to immediately notify the police of the jurisdiction in which the accident occurred. This includes, but is not limited to accidents involving: (1) Fatal or nonfatal personal injury, or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway, and therefore requires towing.

D. *Accident investigation.* Each State should establish a plan for accident investigation and reporting which should meet the following criteria:

1. Police investigation should be conducted of all accidents as identified in section IV.C.2. of this guideline 18. Information gathered should be consistent with the police mission of detecting and apprehending law violators, and should include, as a minimum, the following;

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that (1) contributed to the accident where the investigating officer has reason to believe that violations were committed regardless of whether the officer has sufficient evidence to prove the

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violation(s); and (2) for which the driver was arrested or cited.

b. Information necessary to prove each of the elements of the offense(s) for which the driver was arrested or cited.

c. Information, collected in accordance with the program established under Highway Safety Program Guideline No. 15, Police Traffic Services, section I-D, relating to human, vehicular, and highway factors causing individual accidents, injuries, and deaths, including failure to use safety belts.

2. Accident investigation teams should be established, representing different interest areas, such as police; traffic; highway and automotive engineering; medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining probable causes of accidents, injuries, and deaths. These teams should conduct investigations of an appropriate sampling of accidents in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, and that have a significantly large or disproportionate number of accidents.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of accidents or injury-producing accidents.

c. Drivers, pedestrians, and vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of motor vehicle traffic accidents or injuries.

d. Accidents in which causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors that concern State and national emphasis programs.

V. *Evaluation.* The program should be evaluated at least annually by the State. Substance of the evaluation report should be guided by Chapter V of the Highway Safety Program Manual. The National Highway Traffic Safety Administration should be provided with a copy of the evaluation report.

HIGHWAY SAFETY PROGRAM MANUAL

SUPPLEMENT A

VOLUME 0—PLANNING AND ADMINISTRATION

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A. Glossary of Definitions.
B. Example of State Enabling Legislation.
C. Example of State Executive Order.

CHAPTER I. PURPOSE

1. *Introduction:* A statewide highway safety program needs leadership and coordination among the various components which comprise it in order for it to achieve the State's objectives in an efficient and timely manner. The statewide program needs to be viewed as a comprehensive undertaking which requires careful and continuing planning, organizing, direction, and control. Because of the wide variety of officials and State agencies responsible for various aspects of highway safety it is considered " . . . essential to administrative workability and the success of the program that there be one central authority responsible to the Secretary for the State's safety program. Accordingly, the bill as . . . [enacted] requires that the Governor of the State be the responsible official. It places no restriction, of course, upon his power to delegate his functions in any way he wishes for administrative purposes, provided he remains the State official responsible to the Federal Government for conduct of the State's program." [1]

2. *Purpose:* The purpose of planning and administration is to draw together under the direction of the Governor all the diverse statewide highway safety activities, including activities responsive to the Standards

[1] H. Rept. 1700, 89th Congress, 2d Session, p. 21.

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promulgated by the Department of Transportation, into a well-structured, concerted effort that satisfies the State's highway safety objectives in such a way that a long-term, stable, and thoroughly professional program is assumed.

CHAPTER II. AUTHORITY

The authority for a planning and administration program is contained in chapter 4 of title 23 U.S.C. (hereinafter referred to as the Highway Safety Act of 1966). Section 402(b)(1) states that:

"The Secretary shall not approved any State highway safety program under this section which does not . . . (A) *provide that the Governor of the State shall be responsible for the administration of the program.*"

CHAPTER III. GENERAL POLICY

1. *Introduction:* a. It is the intent of the Highway Safety Act of 1966 "to increase highway safety" through the promulgation of uniform national Highway Safety Standards. For the purpose of implementing the Act, the National Highway Safety Bureau was created and is charged with the administration of the Act and for providing technical assistance to the States.

b. Under the Act a State is responsible for planning and implementing its own statewide highway safety program. Thus, much latitude is given to the State to develop the specifics of its program according to the State's unique circumstances and particular highway safety needs. However, in order to assure a uniform national program, the Federal Government has issued the guidelines represented by the volumes of this Manual, which should be considered by each Governor or his representative in developing the State's program.

2. *Policy statements:* The Highway Safety Act of 1966 provides the framework for the development of policy guidelines. The following sections of the law, in particular, apply to statewide planning and administration:

a. ". . . that the Governor of the State shall be responsible for the administration of the program." [23 U.S.C. 402(b)(1)(A)].

b. ". . . [that] political subdivisions of such State [be authorized] to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform standards of the Secretary promulgated under this section." [23 U.S.C. 402(b)(1)(B)].

States should encourage the maximum participation in the Highway Safety Program of local political subdivisions by program guidance and financial, professional, and technical assistance.

c. ". . . that at least 40 per centum of all Federal funds apportioned under this section to such State for any fiscal year will be expended by the political subdivisions of such State in carrying out local highway safety programs authorized in accordance with subparagraph (B) of this paragraph." [23 U.S.C. 402(b)(1)(C)].

Expenditures to satisfy this provision must be for the benefit of local political subdivisions.

d. ". . . that the aggregate expenditures of funds of the State and political subdivisions thereof, exclusive of Federal funds, for highway safety programs will be maintained at a level of such expenditures for its last two full fiscal years preceding the date of enactment of this section." [23 U.S.C. 402(b)(1)(D)].

Federal funds appropriated to finance State and local government grants are intended to supplement and not to substitute for State and local highway safety program expenditures.

e. ". . . After December 31, 1969, the Secretary shall not apportion any funds under this subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section. Federal aid highway funds apportioned on or after January 1, 1970, to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State is implementing an approved highway safety program. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of the preceding sentence to a State . . ." [23 U.S.C. 402(c) as amended].

A self-evaluation by each State of its highway safety program is required. A review of each State's highway safety program will be performed by the NHSB. Approval by the Secretary of Transportation will be based on the review of the submission by the State.

CHAPTER IV. PROGRAM DEVELOPMENT AND OPERATIONS

1. *Introduction:* This chapter reviews the requirements for and suggests an approach to developing and administering a statewide highway safety program. This chapter and the following chapter concerning program evaluation together outline a suggested management approach to highway safety that embraces all highway safety functions and their relationships to the national standards. This volume does not address itself to those items of the State and com-

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munity highway safety program that relate to project approvals, fundings, reimbursements, authorizations, apportionment, and other administrative details.[1]

a. Management approach.

Since the Governor is designated by law as responsible for the administration of the statewide highway safety programs, the management approach that follows has been structured to be exercised at the State level. However, where necessary, local government relationships to the State management operation have been identified and discussed. Local government participation in the statewide program is recognized as being an extension of the Governor's overall responsibility for the administration of the program. In addition, the management approach is presented as if a State were making initial explorations for implementing a highway safety program. Emphasis is placed on major management activities to be undertaken, organizational criteria, and arrangements, primary responsibilities, decision points, and relationships.

b. Management process.

Exhibit I, gives an overview of the entire management process. Each of the major phases of the process is discussed in depth in this chapter.

2. *Program Development:* Highway safety is recognized as requiring the collaboration of a wide variety of services and activities that emanate from the several national standards and the program guidelines set forth in the volumes of this Manual. The challenge of management in this field is to embrace all of the relevant services and activities at all levels of government in the State, and as appropriate, in the private sector and draw them together into a unified program that works in concert to increase highway safety.

a. Purpose.

The first phase of managing a highway safety program should consist of formulating and developing the extensive and diverse highway safety activities into a unified program and organizing these activities for management purposes. Such program development assists the Governor in fulfilling his responsibility for the administration of the highway safety program. As such, program development is most appropriately the function of the Governor's designated central administrative official for highway safety at the State level.

b. Management cycle.

Although the following management information is broken out in distinct steps, it should be understood that the actual management of highway safety programs forms an ongoing process. In this cycle, the various management phases overlap and are not discrete. The information is broken out to show how the phases interrelate.

c. Establishment of a management organization.

The initial task in the development and operation of a statewide highway safety program is the establishment of a management organization. This includes the designation of a central position of authority and responsibility for planning, coordinating, evaluating, and providing leadership to the statewide highway safety program.

EXHIBIT I—AN APPROACH TO THE STATEWIDE HIGHWAY SAFETY PROGRAM MANAGEMENT PROCESS

Program development	Program operations and administration	Program evaluation
Establish management organization	Reassess alternatives and set priorities	Evaluate statewide program.
Formulate objectives	Analyze and select activities	Evaluate management performance.
Identify and interrelate activities	Prepare program budget	
Prepare a program structure	Execute and control program	
Assign responsibilities	Develop program change control	
Conduct program inventory		

(1) Governor's Representative.

The Governor should appoint a central State official for highway safety.

(a) This official should be known as the Governor's Representative for Highway Safety and should normally function as the highway safety program manager. Throughout the chapter this position will be referred to as the Governor's Representative/program manager. However, a separate position of program manager might be designated in a subordinate administrative position to the Governor's Representative. Exhibit II, presents a representative organization structure which illustrates the central position of the Governor's Representative/program manager.

[1] These are discussed in detail in Volume 100, *Highway Safety Program Administration* to be published.

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(b) The Governor's Representative/program manager should act in a staff capacity to the Governor. In discharging his duties, the Governor's Representative/program manager should work at the cabinet level with all State line agencies (e.g., Public Health, Highways, etc.) and independently elected officials with regard to all activities concerning highway safety and the national standards. He should have the responsibility and authority to:

1. Define the objectives of the comprehensive highway safety program and its component activities.

2. Balance and coordinate the State's resources for the greatest overall highway safety program effectiveness.

3. Organize and assume the execution of a statewide highway safety program.

4. Recommend appropriate changes and new activities.

5. Maintain a focal point on highway safety for local jurisdictions.

6. Maintain liaison between the State and the Federal Government, and with other States.

7. Receive and transmit State agency requests for Federal highway safety funds and assure financial review and approval of such requests.

8. Specify information needs and systems for the planning and analysis of the statewide highway safety programs.

9. Evaluate the statewide highway safety program and provide this information to the Governor on a timely basis.

10. Assist in defining statewide highway safety manpower needs and resources.

11. Review and make recommendations to the Governor on the assignment of responsibilities and the approval of plans and activities of the State departments and agencies involved in highway safety.

12. Coordinate the dissemination of public information on highway safety throughout the State.

13. Prepare a separate budget that represents the highway safety program at the State level.

14. Maintain an advisory role on highway safety to State departments, including the formulation of manpower development requirements.

15. Provide for appropriate inspection and audit.

(2) Relationship with local government.

The Governor's Representative/program manager should also provide advice, leadership, and coordination for assuring that the Statewide highway safety program and the national Standards are effectively communicated to and executed at the local level. Therefore, he should immediately attend to defining his formal channels of communication within the considerations of his staff, the organization of the State government, size of State, and his authority and responsibility.

(a) In overseeing the Statewide highway safety program, the Governor's Representative/program manager should formalize channels of communication with local jurisdictions consistent with the needs of the program.

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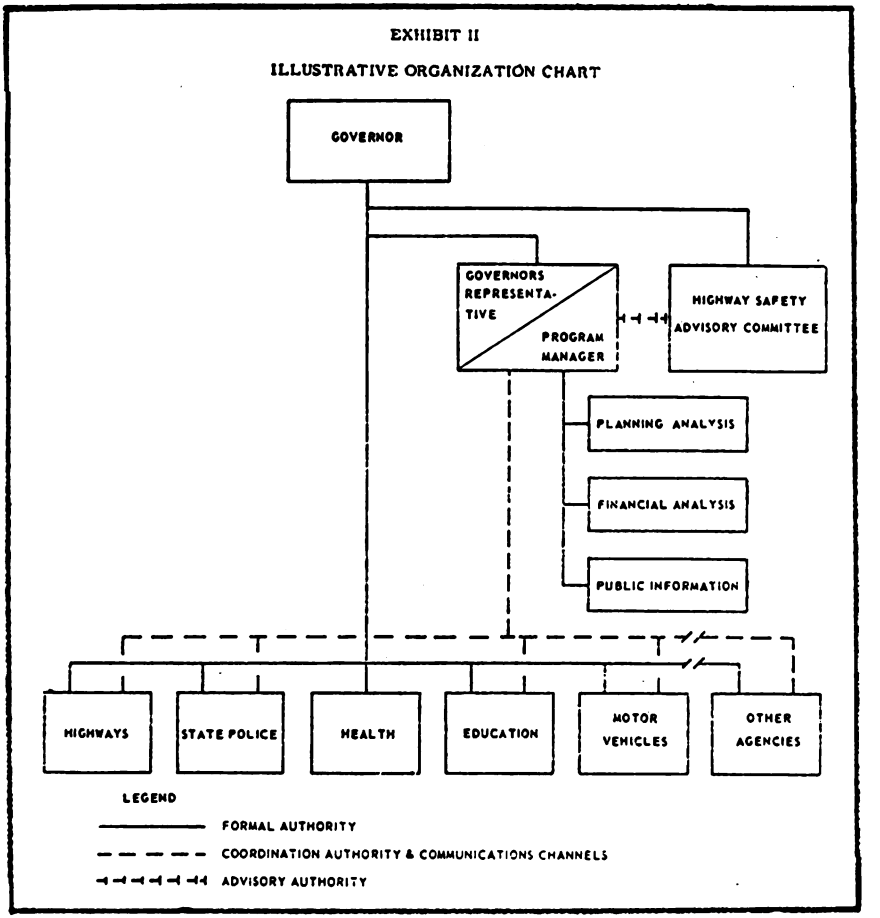

(b) The Governor's Representative/program manager should receive and transmit local requests for Federal highway safety funds for financial review and approval of such requests. He (and his designated representative) should assist, as requested, in formulating local highway safety program development and operations.

(3) Relationship with private sector.

The Governor's Representative/program manager should develop and maintain a close working association with private groups and individuals (e.g., PTA's, safety councils, health organizations, research workers, colleges and universities) that do, or can, contribute to the improvement of highway safety in the State. This can be accomplished by having the Governor's Representative/program manager act as the focal point of governmental activities in highway safety and as the official Statewide coordinator of highway safety activities.

(4) State highway safety advisory group.

To assist in fulfilling the requirements and necessary communications of his leadership and coordination functions, the Governor's Representative/program manager may find it desirable to have a highway safety advisory group.

(a) Members of such a group might be appointed by the Governor, or as otherwise provided by appropriate statute, and should include senior officials from, but not limited to:

1. State agencies.
2. State legislature.

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3. State judiciary.
4. Local jurisdictions.
5. Private organizations.
6. Universities.
7. Professional organizations.
8. Labor and industry.
9. Private citizens.

(b) This advisory group should have the responsibility to:

1. Assist the Governor's Representative/program manager in setting State and community highway safety objectives.

2. Provide advice on collecting, analyzing, and disseminating information related to highway safety.

3. Express public attitudes, opinions, and ideas on highway safety.

4. Assist the Governor's Representative/program manager in encouraging innovative highway safety programs and activities.

(c) The Governor might be chairman of such a group and the Governor's Representative/program manager might be designated his alternate as well as secretary of the group.

(5) Staff assistance.

The Governor's Representative/Program manager requires staff assistance of a magnitude depending upon the size and complexity of the Statewide highway safety program. This staff assistance is necessary to support the activities of the Governor's Representative/program manager enumerated above.

(6) Enabling authority.

To assist the Governor's Representative/program manager in effectively coordinating and implementing the Statewide highway safety program, it may be desirable to formalize his role. This can be accomplished by:

(a) First, establishing his position, authority, and responsibilities in law. A discussion of model State enabling legislation is included in Appendix B of this volume.

(b) Second, having the Governor issue a formal executive order to State agencies and local jurisdictions giving recognition to the purpose, authority, and responsibilities of the Governor's Representative/program manager. A model executive order for this purpose is included in Appendix C of this volume.

d. Formulation of highway safety objectives.

Based upon the Governor's policies and the national Highway Safety Standards, a set of specific highway safety objectives should be formulated for the State. These objectives should become the foundations for structuring, selecting, and evaluating services within the highway safety program. While it is apparent that the overall objective of the highway safety program is the reduction of traffic crashes and fatalities, effort should be directed to further refining objectives of each major program element (driver education, motor vehicle inspection, etc.) to specific sub-goals to be pursued for discrete planning periods (two-year and five-year spans are suggested).

e. Identification and interrelationship of all activities needed to satisfy objectives.

(1) Once objectives are formulated, then all State activities necessary to achieve them should be identified and related. By identifying and relating activities to objectives, the pattern of relationships these activities form should become recognizable. With recognition of activity relationships, the allocation of these activities among organizations, departments, and agencies may be accomplished within the individual considerations of each State. It should be noted that the various activities involved in implementing each Standard may often be performed by several State agencies and organizations.

(2) The requirements for planning, coordinating, and evaluating the activities of a Statewide highway safety program will be enhanced by knowing the role and objective of each activity and how it fits into the total program. For example, once the specific objectives of driver education are identified, the activities to accomplish these objectives are established, and the necessary interrelationships are developed with such other programs as driver licensing and motor vehicle registration. Specific tasks may then be assigned to such functional agencies as the Department of Public Education, Department of Motor Vehicles, or any other functional organization without inhibiting the required central highway safety planning, coordination, and evaluation.

f. Preparation of a functional program structure.

A program structure is a document that assembles all highway safety program activities into a unified framework. This framework shows the highway safety program as a system composed of related activities.

(1) Preparation of functional program structure involves the actual identification and classification of activities by major highway safety factors (human, vehicle, highway, and system support) and the major program activities (entry, operating, cleanup, disposition, diagnosis). Illustration of a matrix form of this identification and classification is shown as Exhibit III.

(2) Criteria to be applied in assembling highway safety activities within a functional structure are:

(a) The groupings of activities should be logical and similar in purpose and character.

(b) Activity groups should be managed, if possible, by a single agency. (An activity group is a related set of safety activities as illustrated in Exhibit III by the two activities "Motor Vehicle Inspection" and "Motor

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Vehicle Registration" along the "Vehicle" row under the "Entry" column.)

(3) Major uses of this kind of highway safety program structure are to:

(a) Assign responsibilities for administering highway safety activities.

(b) Assess the completeness of highway safety activities and identify any deficiencies.

(c) Analyze the interrelationships among highway safety activities and identify coordination requirements.

(d) Organize planning and reporting documents and procedures.

g. Assignment of activity responsibilities.

Once the program structure takes form, attention should be directed to developing an effective and comprehensive distribution of responsibilities between levels of government, and, at each level of government, between agencies.

(1) Because of the widely varying laws, conditions, traditions, capabilities, financial resources, and attitudes among the States, no specific recommendation is made here concerning assignment of responsibilities among State and local agencies and jurisdictions.

(2) However, there are fundamental criteria that should be considered in the assignment of program responsibilities. These criteria are:

(a) Responsibility for each highway safety activity should be assigned to specific governmental agencies responsible for geographic or functional areas of a size and/or composition which will enable effective accomplishment of the activity.

(b) Responsibilities should be assigned to jurisdictions that have the ability to plan effectively for the particular activity required and that can carry it out effectively.

(c) A jurisdiction or agency should have the commensurate authority to implement the responsibility and should be accountable for performance.

EXHIBIT III—FUNCTIONAL PROGRAM STRUCTURE MATRIX WITH ILLUSTRATIONS OF USE

Program factors	Program activities				
	Entry	Operating	Cleanup	Disposition	Diagnosis
Human	Curriculum development.	Enforcement of rules of the road.	Emergency treatment.	Court operations trial.	Analysis of driver crash and violation statistics.
	Driver testing	Detection of intoxicated drivers.	Testing of crash involved drivers for alcohol.	Disposition and rehabilitation.	Analysis of driver behavior.
	Ambulance driver testing.	Enforcement of helmet use by motorcyclists.		Reporting	Analysis of effects of judicial actions.
Vehicle	Motor vehicle inspection.	Enforcement of motor vehicle condition.	Wreckage clearance.	Motor vehicle reinspection.	Analysis of accident incidence by make and year of vehicle.
	Motor vehicle registration.				
Highway	Operating design standards.	Traffic flow regulation.	Highway repair	Investigation of highway condition.	Identification of high-accident locations.
	Crash design standards.				Analysis of adequacy of operating design.
	Contract specifications for safety.				Analysis of adequacy of crash design.
System support	Formulation of codes and laws.	Routine communications.	Crash reporting	Merger of driver, vehicle, highway, and related records.	Analysis of records.
	Complication of driver and vehicle records.		Emergency communications.		Identification of problems and statistical reporting.
			Emergency transportation, emergency command and control.		

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(d) A jurisdiction should have suitable financial and manpower resources available to support its responsibilities, as well as the flexibility to support the expanding, contracting, or changing requirements that are associated with these responsibilities.

(e) Public support and involvement, which is particularly necessary in highway safety activities, should be fostered by the particular jurisdiction assuming pertinent responsibilities.

(f) Activities should be administered at a governmental level as close to the local community as possible while still satisfying all other criteria.

(g) The overall distribution of responsibilities should form a sound structure for both intergovernmental and intragovernmental operations for realizing highway safety program objectives and should be recognized as such.

(3) After applying organizational criteria such as those listed above to the program structure, the Governor or his Representative should be able to determine what is the best distribution of responsibility for achieving Statewide highway safety objectives.

h. Preparation of a program inventory.

To complete the program development phase, the Governor's Representative/program manager should prepare a Statewide highway safety program inventory. The purpose of this inventory is to identify all current highway safety activities in the State, to measure their progress, and to project existing plans. The program inventory should include the following points:

(1) A description of activities under way and their status (i.e., static, expanding, starting up).

(2) Coverage of existing activities, including:

(a) Volume of service or level of activity, such as:

1. Current work load (number of vehicles being inspected, drivers licenses issued, etc.).

2. Relationship to demand (number of vehicles needed to be inspected, number of drivers licenses being issued, etc.).

3. Relationship to national Standards.

(b) Index or quality specification to which performed (such as quality control in driver education).

(3) Annual cost of existing activities and projected level for 2 and 5 years forward for States and local activities.

(4) Source of funds for each activity (general fund, Federal aid, etc.).

(5) Assignment of responsibility for performing activities including:

(a) Between levels of government.

(b) Between agencies at each level of government.

(6) Description of plans for expanding volume or raising quality of service or activity.

(7) Management analysis of:

(a) Status (resource requirements, manpower development, etc.).

(b) Status with respect to State goals (are the activities meeting objectives?).

(c) Status with respect to national Standards with emphasis on effectiveness.

3. *Program Operations and Administration:* The second phase of managing a highway safety program is the implementation of the program as developed. The five major responsibilities of the Governor's Representative/program manager necessary for this phase are discussed in this paragraph.

a. Reassessment of alternative approaches and setting priorities within the program.

To keep pace with changing needs and requirements, there should be a continuing reassessment of present programs and formulation of program alternatives. This is most effectively achieved through reviews of the functional program structure as it relates to the objectives of highway safety and to new methods, techniques, and activities of program development. The major checkpoints in this responsibility are:

(1) Ensuring full coverage of the required and additional activities in the program.

(2) The use of appropriate methods and techniques in providing services and in recognizing alternative approaches.

(3) Setting priorities among alternatives and between activities to achieve highway safety objectives.

b. Approach analysis and selection.

In approach selection, decisions must be made as to what activities to implement and to include in budget preparation. The three primary considerations in approach analysis and selection are:

(1) The requirements of the Standards.

(2) The costs of the approach.

(3) Its benefits (expressed in objective terms).

c. Program budget preparation.

A separate program budget should be compiled for highway safety.

(1) The Governor's Representative/program manager, working in close consultation and coordination with State department heads and officials should examine each year or two the working objectives and requests of the operating State departments that concern highway safety and formulate a highway safety program budget. The decisions to be made during budget preparation are on the best distribution of resources to satisfy objectives.

(a) The highway safety program budget should translate the working objectives into State resources necessary for highway safety activities as well as express program objectives and costs for the next 5 years. The State should also include in its program objectives and costs for the next 5 years the needs of the local political subdivisions.

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(b) Each continuing year, the 5-year program budget plan should be updated and extended for one additional year.

(2) For internal managerial purposes, the highway safety program budget may be converted to line-item format showing resource appropriations distributed to the appropriate State departments.

d. Annual program.

An annual work program should be prepared to express the State plan for highway safety for development and submission of applications to the National Highway Safety Bureau. The procedural details for the annual work program will be contained in Volume 100, *Highway Safety Program Administration.*

e. Program execution and control.

In the execution of the Statewide highway safety program, the Governor's Representative/program manager should be concerned with the factors of schedule, costs, and quality of services.

(1) Techniques for monitoring the time schedule of activities are available in such forms as Program Evaluation Review Technique (PERT) and bar charts. These techniques will allow the Governor's Representative/program manager to determine if activities are ahead of or behind schedule (e.g., if records systems are being developed on time).

(2) Cost control consists of ensuring that expenditures for highway safety are maintained within plans set by the budget and that the desired achievements from expenditures are realized. A basic principle of cost control is for each department and agency to adopt formal procedures for registering actual costs against planned expenditures. Cost control may be centered around three processes, including:

(a) The clearance of expenditures for authorization before being committed.

(b) A system for reporting costs and achievement to the Governor's Representative/program manager on a periodic basis.

(c) An independent audit of the program to check the propriety of expenditures.

(3) The Governor's Representative/program manager and his staff are encouraged to conduct periodic reviews of programs and particular components of a program at both the local and State levels to ascertain the effectiveness and quality of effort.

f. Program change control.

Flexibility is needed to change the program and shift resources during program execution.

(1) To accommodate the need for flexibility in program execution and still keep the program as close to plan as possible, a procedure for receiving, evaluating, and deciding upon requests for program changes should be instituted.

(2) In entertaining any program change request, the Governor's Representative/program manager should consider the following questions:

(a) Does the change increase, decrease, or have no effect on the achievement of program objectives?

(b) What is the impact of change on the highway safety program in terms of structural relationships and coordination?

(c) What costs and resource requirements will be necessary to support the change over the next 2 to 5 years and what effect will there be on approved budget plans?

(3) Each major program change should include replanning and redirection of objectives and effort and a reexamination of alternatives and priorities.

CHAPTER V. PROGRAM EVALUATION

1. *Introduction:* The realization of a fully effective Statewide highway safety program necessitates a continuing evaluation of performance. The evaluation should be concerned with the program performance of the total Statewide highway safety program.

2. *Purpose of Evaluation:* Evaluation is needed in order to optimize the allocation of limited resources. It is the means by which State officials can make intelligent decisions on the effectiveness of the overall program, on the individual elements of the Statewide program, and on the stewardship of the program. It identifies the status of the program vis-a-vis objectives and illustrates those areas of effort which need further attention.

3. *Areas for Evaluation:* Two major areas in planning and administration require evaluation:

a. Management performance.

Management performance evaluation is concerned with measuring how well the Statewide highway safety program, and each individual component of the program, is meeting established schedules, staying within planned costs, achieving objectives, and providing quality in implementation.

b. Program performance.

Highway safety program performance evaluation should include the following:

(1) Detecting and correcting program problems.

(2) Determining how well programs are performing against plan.

(3) Determining the value of one program vis-a-vis other programs.

(4) Measuring how well programs are meeting overall highway safety objectives.

4. *Evaluation procedures:* The following procedures are suggested for evaluation of the planning and administration function and for evaluation of the total Statewide highway safety programs in each State. The State is encouraged to develop techniques and procedures which are suitable to the

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particular legal, demographic, economic, and other characteristics of the State.

a. Evaluation of planning and administration function.

In the early stages of development of the Statewide program it may be helpful to make use of a checklist of items which shows the current status of the program, areas where concentrated effort is needed, and the role of the Governor's Representative/program manager. The following items should be included:[1]

(1) Involvement and participation of State agencies and involvement and participation of local governments.

(2) Enabling legislation or other documents citing the authority of the Governor's Representative/program manager.

(3) Base year criteria, to indicate that aggregate expenditures of the State and local governments for the highway safety program, exclusive of Federal funds, will be maintained at a level which does not fall below the base year average. Some of this information is readily available from the base year criteria and the section 207 Needs Study work previously submitted.

(4) Current program deficiencies, indicating areas of the current program noted as deficient when compared against the Standards and required remedial action.

(5) Program implementation narrative, including a descriptive presentation of safety program activities based on deficiencies, time phases, and priorities.

(6) Political subdivision program, with a discussion of the State-local government coordination effort.

(7) Measurements of performance as presented in other volumes of this Manual.

b. Evaluation of Statewide program.

Evaluation of the Statewide highway safety program should include:

(1) A set of performance indicators for interpreting the value and effect of services provided by each component of the Statewide program. The indicators should measure volume, quality, and the comparative quantity of work provided. To the fullest extent feasible, the objectives of each program and program component should be quantified (e.g., decreases in numbers of crashes, increases in number of trained drivers, etc.). An example of performance indicators follows in Exhibit IV.

(2) An information system to supply management with accurate and timely data on the quality and quantity of each component of the Statewide program. Information and reports should come from both State departments and local jurisdictions on such items as time schedules, cost data, level of effort, effect of effort, reduction in traffic crashes. This information and reports should show the planned level of accomplishment and the actual level.[2]

(3) A useful technique for approaching the evaluation of ongoing program and elements of programs and for setting priorities within programs and between programs. Cost-effectiveness analysis is a means of measuring the cost of implementing a program or approach in, for example, reducing the number of crashes. Program and approach alternatives should be examined to determine, if possible, which alternative can achieve a specified objective for the least cost.

EXHIBIT IV

EXAMPLES OF PERFORMANCE INDICATORS

Crash rates:
- By severity.
- By jurisdiction.
- By roadway type.

Percentage and numbers:
- Of fatal crashes where alcohol is present, by concentration in blood.
- Of fatal crashes involving vehicle defects.
- Persons fatally injured who were not wearing a safety belt.
- Motorcyclists fatally injured who were not wearing crash helmets.

Death rates:
- Per capita, by jurisdiction.

Losses due to injury:
- Number of hospital bed-days due to traffic crashes.

Ranking of crash causes by injury severity.

Bicycle deaths:
- Number.
- Distribution of visibility conditions.

Number of revoked or suspended drivers cited.

Emergency response rates:
- Percentage distribution of intervals between crashes producing serious injury and arrival at medical facilities.

(4) Cost/benefit analysis estimates the benefits resulting from a program or approach in terms of lives saved, injuries reduced, and property damage avoided. While it has limited application in a Statewide highway safety program due to the difficulty of isolating the impact of one factor, it is suggested that the Governor's Representative/program manager use this analysis wherever feasible.

[1] This information was sent to the States by the NHSB on July 22, 1968.

[2] Chapter VI, Reports, of this volume, and Volume 10, *Traffic Records*, present further discussion of information system characteristics.

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CHAPTER VI. REPORTS

1. *Introduction:* One of the most important elements in the total management of the highway safety program is an effective method for the Governor's Representative/program manager to obtain and/or develop the kinds of reports which enable him to:

a. Plan, evaluate, and coordinate the total Statewide highway safety program.

b. Establish priorities in the Statewide highway safety program.

c. Provide guidance to the several operating departments at the State level and to the local jurisdictions.

d. Advise the Governor of the State on the status of the Statewide highway safety program.

e. Prepare, for the Governor, an annual report to the National Highway Safety Bureau which shows a summary evaluation of the State program.

f. Maintain liaison with the National Highway Safety Bureau for the exchange of technical and statistical date.

2. *Management Information Reports:* a. The primary purpose of management reports is to enable the Governor's Representative/program manager to determine and monitor on a continuing basis the status and the problems of the Statewide highway safety program. To achieve this goal, the Governor's Representative/program manager should receive at a frequency necessary for effective management, the following types of reports:

(1) A report from the head of each operating department (e.g., Public Health, State Police) summarizing the highway safety activities in his department.

(2) A tabulation of the statistics of the highway safety program activities from each operating department. For example, the number of persons receiving driver education, the number of persons convicted of driving under the influence of alcohol.

(3) Reports on the status of projects financed wholly or in part by the Federal Government.

(4) Reports from local jurisdictions on the highway safety activities under way. The magnitude, complexity, and frequency of reporting should be based on the extensiveness of the local program.

b. In addition to frequency of reporting, it is important to encourage prompt reporting that will minimize time lags between the issue of the report and the period upon which the report is based.

c. The Governor's Representative/program manager should assure that reports called for in other volumes of this Manual are prepared and that reports submitted by State agencies to the NHSB are transmitted through his office.

3. *Evaluation Reports:* a. One of the major management tasks for the Governor's Representative/program manager is the preparation of reports which show an evaluation of the Statewide highway safety program. Evaluation reports should consist of:

(1) Annual Statewide evaluation of the highway safety program. This report should condense the reports mentioned in paragraph 2 of this chapter into a form which shows the following:

(a) Current status of Statewide program.

(b) Changes from previous year.

(c) Progress made in reducing traffic crashes as a result of the highway safety program and where possible for each major component of the program.

(d) Total cost of the Statewide program, including comparative data and actual expenditures and planned expenditures.

(2) A report showing future plans for the Statewide program. This report should show plans and estimated cost for the following 12 months and plans over a 5-year period.

b. The evaluation reports should be useful for informing the Governor, the legislators and the public of the progress made in the State in reducing traffic crashes.

4. *Reports to National Highway Safety Bureau:* While this volume is designed for the management of a State highway safety program, it is desirable to include some indication of the need for and desirability of communication between the State and the Federal Government.

a. The prime requirement of communication from the State to the Federal Government is to transmit information that describes and assesses the State highway safety program. Therefore, the NHSB has asked each State for information which will enable the Secretary of Transportation to make determinations required of him by the Highway Safety Act.[1]

b. The NHSB requires periodic reports from each State to enable the Bureau to be fully informed of the highway safety activities throughout the country and be in a position to analyze the status and needs of the country as a whole.[2]

CHAPTER VII. LOCAL GOVERNMENT PARTICIPATION

1. *Introduction:* Planning and administration of a Statewide highway safety program should involve the active participation of local governments because a significant amount of the operational requirements of the national Standards and other highway

[1] A procedural guide was sent to the States on this subject on July 22, 1968.

[2] Volume 100 will contain detailed instructions and clarifications on the role and reporting requirements of the National Highway Safety Bureau.

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safety activities is administered at the local levels. It is most desirable to create a close working relationship between the State and its local governments in forming a truly Statewide highway safety program.

2. *Local Public Agency Responsibilities:* a. Local officials in each State should be fully aware of the importance of the role they play in the Statewide program and should endeavor to provide the fullest cooperation in the State's attempt to develop and operate a strong Statewide highway safety program. The chief executive of each jurisdiction (mayor, county chairman, etc.) should assume the leadership in the establishment and implementation of relevant programs and activities in the jurisdiction. Communications from local jurisdictions to the Governor's Representative/program manager should be through him and vice versa.

b. In highly urban jurisdictions it may be desirable to establish the position of a local highway safety program manager. The concepts and guidelines expressed in this volume will be of assistance to a local program manager.

c. Areawide coordination may be assisted through associations of counties and cities, or through other regional arrangements.

3. *Role of Governor's Representative/Program Manager in Local Highway Safety:* The Governor's Representative/program manager has four major responsibilities in fostering local government participation in the Statewide highway safety program. These are:

a. To develop and assist local government leadership in the field of highway safety.

b. To assist in program coordination with and among local jurisdictions.

c. To assist in local program development and operation.

d. To review and transmit applications for Federal funds for local highway safety projects and programs within the Statewide highway safety program.

APPENDIX A

GLOSSARY OF DEFINITIONS

This glossary defines those terms whose meanings may be unclear in the context in which they are used. These definitions are meant to apply only to the usage of these terms in this volume.

Activity. The effort involved in providing a service within the highway safety program.

Allocation. A sum of money that is designated for a specific purpose.

Apportionment. The distribution of total Federal funds among the States according to a formula.

Base Year. A reference year established by Sec. 402(b)(1)(D) of title 23 U.S.C. in order to determine the relative State level of expenditures to preceding years.

Federal Aid. Funds available to State governments, and through them to political subdivisions, to implement the uniform national safety standards.

Functional Programs. A grouping of related activities within the highway safety program responsive to each of the Standards (e.g., motor vehicle inspection, driver licensing, etc.).

Governor's Representative. The State official who is responsible to and represents the Governor in the conduct of the Statewide highway safety program.

Line-Item Budget Requests. The conventional manner in which State departments, agencies and political subdivisions request budgetary funds for personnel, materials and supplies, equipment, and other operating needs.

National Standards. Uniform performance requirements in highway safety promulgated by the Secretary of Transportation in several functional programs.

Political Subdivisions. State-recognized administrative units having highway safety responsibilities below the State level and responsive to an electorate residing within a defined geographic area of the State.

Private Groups. Organizations outside of government that have an interest, or potential interest, in community affairs and highway safety.

Professional Groups. Organizations outside of government that consist of interested governmental officials and/or professionals who participate, or might participate, in the highway safety process.

Program. The Statewide aggregate of highway safety activities in a State.

Program Budget. The compilation of State departmental and political subdivision budget requests classified and converted to show the objectives and cost requirements of the State highway safety program.

Program Group. The physical components of the highway safety system consisting of the human, the roadway, the vehicle, and the supportive activities.

Program Manager. The State official who may be responsible for the management of the highway safety program. The program manager may be the same official as the Governor's Representative or may be appointed by the Governor's Representative.

Program Structure. The relationship which the parts of the program (groups, elements, and activities) bear to one another.

Statewide Highway Safety Program. The sum of State and community efforts in highway safety.

APPENDIX B

EXAMPLE OF STATE ENABLING LEGISLATION

The following suggested State Enabling Legislation has been prepared to call to the

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attention of the States the provision of the Highway Safety Act of 1966 which requires that the Governor of the State shall be responsible for the administration of the highway safety program.

It should be noted that the form and contents of the proposed legislation are merely suggested and that each State should prepare for legislative action proposed legislation that will enable that State, considering the peculiarities of the law and constitution of that State, to secure the benefits available to the State under the Act. Implementation of a Highway Safety Act may require additional legislative action at the State level. As an example, legislation may, in a given State, be necessary to enable the State's political subdivisions to expend the 40 percent or more of the funds as provided by the Act. Therefore, existing constitutional and other requirements should be carefully examined to ensure that all contingencies are considered. Other possible problem areas of a legislative nature will, no doubt, be revealed in due course.

Section 402(a) of title 23 U.S.C., provides that "each State shall have a highway safety program approved by the Secretary • • •."

One of the mandatory conditions, in fact the first condition, attached by the Congress to the Secretary's approval of a State's highway safety program, requires that the ultimate responsibility for the administration of that program rest with the State Governor.[2]

The Governor may, however, administer the Statewide highway safety programs through an appropriate instrumentality of the State.

To enable each State to secure the benefits made available to it under the Act, therefore, it is strongly urged that State legislatures assign the highest priority to the enactment of an assent (or consent) statute, similar to existing State statutes originally enacted following the passage in 1916 of the first Federal-aid Highway Act.

These assent statutes have operated to empower the various State highway departments or road commissions to discharge the responsibilities devolved upon them by the provisions of section 302(a) of title 23 U.S.C. Unless a State's statutory law or constitution already confers the authority contemplated by section 402(b) (1)(A) of title 23 U.S.C., upon its Governor (to administer and be responsible for the State's highway safety program), immediate legislative activity in this area will be necessary. Legislative enactments to accomplish that objective should repeal or modify all State law inconsistent therewith.

It is conceivable that such legislation may be inconsistent with some constitutional provision of a State. In that event, of course, an appropriate constitutional amendment might be necessary.

The National Highway Safety Bureau has suggested that State legislatures consider adopting the following language for their respective assent statutes in connection with the Highway Safety Act:

"The Governor, in addition to other duties and responsibilities conferred upon him by the constitution and laws of this State is hereby empowered to contract and to do all other things necessary in behalf of this State to secure the full benefits available to this State under the Highway Safety Act of 1966, and in so doing, to cooperate with Federal and State agencies, private and public agencies, interested organizations, and with individuals, to effectuate the purposes of that enactment, and any and all subsequent amendments thereto. The Governor shall be the official of this State having the ultimate responsibility for dealing with the Federal Government with respect to programs and activities pursuant to the Highway Safety Act of 1966 and any amendments thereto. To that end he shall coordinate the activities of any and all departments and agencies of this State and its subdivisions, relating thereto."

Appendix C

Example of State Executive Order [1]

The State of

_____

Executive Order

WHEREAS, The Enabling Act (or cite other appropriate State law) has authorized and directed the Governor to do all things necessary on behalf of the State to secure the full benefits of the Federal Highway Safety Act of 1966, Pub. L. 89-564, 80 Stat.

[2] Section 402(b)(1)(A) provides: "The Secretary shall not approve any State highway safety program under this section which does not provide that the Governor of the State shall be responsible for the administration of the program."

[1] It should be noted that the form and content of the above example are merely suggested, and that each State with the advice of its legal counsel should prepare such executive documents in conformity with the particular law of that State as will provide it adequate organization, authority, and direction to secure the benefits of the Highway Safety Act of 1966. It should also be noted that enabling legislation, such as suggested in Appendix B, ante, may be required as the basis of such executive action.

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731, to improve the highway safety of the State; and

WHEREAS, The said Enabling Act has further designated the Governor as the officer ultimately responsible for the highway safety programs pursuant to the said Highway Safety Act of 1966, and authorized and directed him to coordinate the activities of any and all departments and agencies of the State and its subdivisions for such purpose; and

WHEREAS, It is necessary to establish a formal organization and delegate thereto certain of the Governor's powers and authority for the execution of the said highway safety program:

NOW, THEREFORE, I, ————————, Governor of ————————, order and direct as follows:

1. That there is hereby established in the Executive Branch of the State government an office of Highway Safety, headed by a Governor's Representative for Highway Safety appointed by and serving at the pleasure of the Governor, and staffed by such other officers and employees as the said Representative may from time to time appoint according to law.

2. That there is hereby delegated to the Governor's Representative all the powers and authority vested in the Governor by the Enabling Act (or cite other appropriate State law), except the following: (enumerate reservations, if any), and he is directed to exercise the same in pursuance of the said Act. The powers and authority hereby delegated to the Governor's Representative may be redelegated within the Office of Highway Safety, except: (enumerate reservations, if any).

3. That all departments and agencies within the Executive Branch of the State government are to cooperate with the Governor's Representative in the performance of his highway safety functions provided herein, to the full extent permitted by law.

4. That this Order shall take effect upon (fixed date), (appointment, qualification, or confirmation of Governor's Representative), (other contingency).

SUPPLEMENT B

VOLUME 102—HIGHWAY SAFETY PLAN

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II. Content of HSP
III. Submission and Approval
IV. Evaluation
V. Reporting Procedures

Appendices

A. Glossary of Terms
B. Minimum Requirement Compliance Certificate

CHAPTER I—INTRODUCTION

1. *Purpose.* This volume establishes NHTSA and FHWA policy and procedures for the submission of each State's Highway Safety Plan (HSP). It supersedes the requirement for the Annual Work Program (AWP) and the Comprehensive Plan (CP).

2. *Definition.* The Highway Safety Plan provides multi-year planning capability and current year program implementation which is the basis for the execution of Federal-aid Agreement. The HSP will be updated on an annual basis.

3. *Authority.* 23 U.S.C. 402(a) requires that each State shall have a highway safety program approved by the Secretary, and that such programs shall be in accordance with uniform standards promulgated by the Secretary. Since inception of the highway safety program, section 402(a) has been interpreted as requiring submission by the States of a general or master plan covering existing and proposed State highway safety activities for a multi-year period. In accordance with 23 U.S.C. 315, the Secretary or his delegate is authorized to promulgate rules and regulations to implement section 402 by prescribing the form, time, manner of submission, and annual updating of State HSPs.

The following sections of chapter I or title 23, applicable to Federal-Aid highway funds, apply to the HSP, including: Section 105, as to program and approval; section 106, as to plans, specifications, and estimates, and project approval; section 110, as to the project agreement including provision for maintenance; and section 120 as to the Federal share payable.

Section 402 provides that the Secretary shall not apportion any highway safety funds to any State which is not implementing an approved program. The HSP for any given Federal fiscal year, will serve as a basis for a determination that a State is continuing to implement an approved program. It will also provide State input to the NHTSA Plan (NHTSA Order 510-2, August 22, 1975).

Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; Pub. L. 95-620) and Executive Order 12185 direct each Federal agency to take such actions as lie within its authority to maximize the efficient use of energy and the conservation of petroleum and natural gas in programs funded by the agency.

4. *Background.* All States had highway safety programs approved by the Secretary by December 31, 1969, as required by 23 U.S.C. 402. These programs represented each State's Plan covering existing and proposed highway safety activities for the

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multi-year period. Until the beginning of Fiscal Year 1972, most federally supported State and local highway safety activities required to implement the State's Plan were administered on a project-by-project basis.

In Fiscal Year 1971, a new procedure—The Annual Work Program (AWP)—was initiated. The AWP described the annual goals to be achieved and all work to be done in implementing one year of a State's Plan.

In Fiscal Year 1973, the States were required to prepare a new Comprehensive Plan (CP) of current and proposed highway safety activities, for the 4-year period from Fiscal Year 1974 through Fiscal Year 1977. Revisions to the CP were required for Fiscal Year 1976 to include provision of curb ramps for the handicapped and bicycle safety education programs, in addition to the provisions of the Vehicle-in-Use (VIU) Standards.

In Fiscal Year 1977, nine States pilot tested a new Vol. 102 Highway Safety Management System Plan (HSMSP), designed to supersede the Annual Work Program (AWP) and the Comprehensive Plan (CP). As a result of the pilot program, Vol. 102 is hereby revised as a Highway Safety Plan (HSP). A draft version of Vol. 102 was previously released for optional use by the States as their Fiscal Year 1978 submittal.

5. *General requirements.* 23 U.S.C. 402(b)(1), 92 Stat. 3318, sec. 403(b), and E.O. 12185 impose certain requirements which must be met as a prerequisite to program approval. To attest that it meets these requirements, a State must submit a Certificate of Compliance (appendix B).

Procedures for implementing the program are contained in the following issuances:

Volume O, Highway Safety Program Manual for Planning and Administration.

Joint NHTSA/FHWA Order 900-4/7-5, August 10, 1971—Guidelines for the Designation of a State Agency Responsible for Highway Safety.

NHTSA Order 460-1, November 2, 1970—State Systems of Administrative and Financial Procedures.

6. *Policy.* a. With reference to the requirements set forth in section 402, State highway safety programs shall be in accordance with the uniform standards, and the Secretary shall not apportion any funds to any State which is not implementing an approved program. 23 U.S.C. 402(c), as amended in the 1976 Highway Safety Act, provides that implementation of a highway program shall not be construed to require the Secretary to require compliance with every uniform standard, or with every element of every uniform standard, in every State.

b. With reference to the statutory requirement that at least 40 percent of all Federal funds apportioned under 23 U.S.C. 402 be expended by political subdivisions in each State, it is DOT policy that political subdivisions must have an active voice in the initiation, development, and implementation of those safety activities so credited to assure that the local participation in highway safety intended by Congress is achieved. NHTSA/FHWA Order No. 462-8/7510.2, Political Subdivision Participation in State Highway Safety Programs, dated June 23, 1976, sets forth this policy in further detail.

c. With reference to the energy conservation requirements of section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 and E.O. 12185, each State receiving funds under 23 U.S.C. 402 shall consider, in the formulation of a Highway Safety Plan, measures by which the efficient use of energy and conservation of energy resources can be maximized in the implementation of the State's highway safety program.

7. *Civil rights requirements.* The Governor's Representative for Highway Safety is responsible for assuring that full consideration of title VI of the Civil Rights Act of 1964 and 23 U.S.C. 324 are included as an integral part of the planning and development of the HSP.

The "Civil Rights Assurances with regard to the State's Highway Safety Program" continue to be incorporated to ensure that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

The State and/or sub-grantees must maintain racial/ethnic data and program information sufficient to permit an initial determination by NHTSA/FHWA that recipients will in fact comply with title VI and 23 U.S.C 324 requirements, and to enable the appropriate Federal funding agency and its State counterpart, to effectively monitor title VI and 23 U.S.C 324 compliance as necessary and appropriate.

Pending issuance of regulations setting forth specific data requirements, each applicant or recipient of 402 funds should determine:

a. The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

b. The population eligible to be served, by race, color, sex, and national origin;

c. The availability of data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program, where necessary, to permit effective participation by beneficiaries unable to speak or understand English;

d. The location of existing or proposed facilities connected with the program, and related information adequate for determining

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whether the location has, or will have, the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

e. The present or proposed membership, by race, color, sex, and national origin in any planning or advisory body which is an integral part of the program; and

f. Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, sex, or national origin.

Additional data, necessary for understanding the information compiled, such as demographic maps, may be required to the extent that it is readily available or can be compiled with reasonable effort.

CHAPTER II—CONTENT OF HSP

1. *Purpose.* This chapter provides guidelines and procedures for the preparation of a State's Highway Safety Plan (HSP).

2. *General.* The HSP is a multi-year planning document which: Identifies a State's highway safety problems, establishes goals and objectives to be achieved, estimates the resources required to achieve those goals and objectives, and specifies the activities which are planned to solve identified problems.

The HSP shall cover the current fiscal year program and planning for three, four or five additional years.

3. *Preparation of the Highway Safety Plan.* The HSP consists of the following six (6) parts, two of which are optional:

I. Highway Safety Plan Summary.
II. Overall Statewide Problem Analysis.
III. Overall Statewide Goals.
IV. Program Structure (Optional).
V. Program Modules.
VI. Research/Demonstration Requirements (Optional).

a. *Highway Safety Plan Summary (Part I).* This part should consist of the Certificate of Compliance (appendix B), a HSP Cost Summary and an Executive Summary which provides a brief multi-year overview of the State's program status, planned activities and anticipated accomplishments, to include: Accident Trends; Significant Statewide Problems Identified; Program Emphasis and Priorities; Statewide Program Goals; Energy Conservation Measures Considered; Key Legislative Needs and Planned Actions; Planned Administrative Actions.

b. *Overall Statewide Problem Analysis (Part II).* This part should provide sufficient statistical data and analytical process information to define impact and systems support problem areas identified and to establish program priorities. More detailed analysis on specific problems should be described in the related Program Modules, Part V (pg. II-5).

The detailed data analysis and resulting reports should be retained by the Governor's Representative and be made available for review by NHTSA Region/FHWA Division Staff as necessary. Problem identification analysis and reporting processes are addressed in detail in the *Problem Identification Manual for Traffic Safety Programs,* NHTSA Vols. I and II.

As part of the data analysis phase of HSP development, the State must give full consideration to the requirements of title VI of the Civil Rights Act of 1964. Data relating to Civil Rights considerations are to be available for review, as needed, in the Office of the Governor's Representative for Highway Safety.

Two types of problems should be identified from the problem analysis process; i.e., impact problems and systems support problems.

(1) *Impact Problems.* An impact problem is directly related to factors contributing to accidents, fatalities and/or injuries, and may be corrected by application of countermeasures designed to minimize the effect of these factors. Impact problems can be identified from analyses of Statewide traffic records data. The analyses should consider, as a minimum: Pedestrian accidents; Motorcycle accidents; Pedalcycle accidents; Passenger Car accidents; School Bus accidents; Truck accidents; Problem Drivers; Roadside and Roadway Hazards; Alcohol Involvement; Youth Involvement; Defective Vehicle Involvement; Suspended/revoked Driver Involvement; Safety belt usage; Speed Involvement.

(2) *Systems Support Problems.* A systems support problem is a deficiency in a vital traffic safety program function, the correction of which may not be directly related to accident/fatality/injury changes. Systems support problems are identified from an analysis of the existing traffic safety system and a review of legislative and regulatory requirements. An inventory of ongoing programs and an analysis of their characteristics in relation to accepted standards and practices is necessary to identify deficiencies; e.g., an assessment of the Highway Safety Program Standards' status and operational programs' status is often a valuable first step in identifying systems support problems. One example could be a required inventory of State and local agency data files, available equipment and user needs to more fully implement a Statewide traffic records system. Another example would be the lack of an accident location reference system for local roads and streets off the Federal-aid and State highway systems.

(3) *Highway-Related Safety Activities.* Greater coordination between the section 402 planning process and activities carried out under the safety construction program

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may be achieved through the problem identification process emphasized in the HSP. The section 402 highway-related safety funds are used predominately to correct system support problems which when resolved, will provide a basis for the safety construction program. The system support deficiencies may be identified through a review of accident statistics, the effectiveness of the process used to establish priorities for a schedule of safety construction projects, evaluations of the safety program, studies to determine highway-related problems and analysis of ongoing highway safety programs in relation to accepted standards and practices.

Any safety construction improvements which are to be used to correct an impact problem in a Program Module (Part V) should be shown in the Problem Solution plan (pg II-7). These activities also should be included in the Overall Statewide Problem Analysis and the Overall Statewide Goals.

c. *Overall Statewide Goals (Part III)*. This part should address the State's overall HSP goals and objectives for the current year and planning years as documented in the Program Modules (Part V). The overall statewide goals should represent the cumulative attainment of Program Module goals established for identified impact and systems support problem areas.

Impact Module goal statements should be expressed in terms of predicted change in accidents, fatalities and/or injuries, over time. Systems Support Module goals should be measurable and quantifiable and address levels of long range achievement of activities planned to correct identified deficiencies. The attainment of individual Program Module goals is dependent upon the cumulative achievement of the objectives established for each related Problem Solution Plan (PSP).

The provision for overall Statewide program evaluation, as required in chapter IV, should be included under this part, insofar as it may be related to attainment of impact and systems support goals. This evaluation overview should describe the methodology and criteria to be used for modules selected for effectiveness evaluation and the administrative evaluation of all program modules.

d. *Program Structure (Part IV) (Optional)*. A program structure provides a management framework for assembling the highway safety program activities into logical, manageable groups for State and local implementation. As such, it illustrates interrelationships among highway safety activities and identifies requirements for interagency coordination and organizational responsibilities.

Each State should develop its Program Structure concept and format in accordance with its individual program planning requirements. Program structure formats can be represented by flow diagrams or networks for the following purposes: To tie the human, vehicle and environmental highway factors to related program areas, problem areas and/or countermeasure areas; To subdivide program areas into countermeasures or task activities related to identified problems.

Regardless of format, the value of a Program Structure is its ability to graphically illustrate the total scope of the highway safety programs in terms of the full range of activities which may be implemented depending upon allocated resources and priorities established through problem identification.

e. *Program Modules (Part V)*. This part is the foundation of the Highway Safety Plan. It provides the framework for defining, scheduling and estimating the cost of program activities required to solve problems identified from analyses of accident data and existing traffic safety systems. A complete Program Module consists of a Problem Statement, a Problem Solution Narrative (including a Program Module Cost Summary), an Evaluation Plan, Problem Solution Plan(s) (PSPs) and PSP Task Narratives; these components are described in detail in this chapter and appropriate appendices.

Each State is urged to submit its HSP with all Program Modules complete. If a State is unable to do so, it is acceptable to present incomplete Program Modules. An incomplete Program Module must contain a Problem Statement and Problem Solution Narrative which includes proposed PSP objectives and estimated costs. These elements should adequately describe the problem and the general strategy to be used by the State to solve the problem. Upon submission of all PSPs necessary to complete a Program Module, an evaluation Plan for that Module should be addressed.

Although the emphasis of this part is on problem solution, there are program areas that require State action though they may not be identified as problems. These areas—Planning and Administration (Management), legislatively mandated programs (e.g., School Bus Driver Training, 23 U.S.C. 406) and administratively mandated programs will require the submission of a Special Program Module for each area which will contain a description of current program status and activities planned to meet operational objectives, together with a PSP(s) and task narrative(s).

The magnitude and area of identified problems will vary, and a number of countermeasures might be applicable in solving a given problem area, each requiring different objectives, tasks and timeframes for implementation.

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Program Modules may consist of the following types of activities: (1) Program Modules with Problem Solution Plans involving only NHTSA activities; (2) Program Modules with separate Problem Solution Plans involving FHWA and NHTSA activities; and (3) Program Modules with Problem Solution Plans involving only FHWA activities.

A complete Program Module shall consist of the following five components:

(1) *A Problem Statement.* Contains a description of the problem area and related analyses.

(a) The description should indicate the magnitude of the problem area, its relation to other problems identified in the overall Statewide Problem Analysis, and whether it involves impact and/or systems support problems.

(b) Impact Problem statements should be supported with quantitative information, abstracted from the detailed data analyses, which rationalizes the identification of the problem area and substantiates the selection of countermeasures proposed.

(2) *A Problem Solution Narrative* outlines the countermeasures to be undertaken to meet anticipated Program Module goals, as well as any incremental timetable for meeting the goals over the period covered by the HSP. Impact problem goals are stated in terms of predicted change in accidents, fatalities and/or injuries. Systems support problem goals are stated in terms of the achievement of activities planned to correct identified deficiencies. Each PSP objective should be discussed as it relates to the overall Program Module goal(s). Those programs implemented entirely with State or local funds, and not used for matching, which relate to the problem area addressed by a Program Module, should be described in the Problem Solution Narrative.

Those programs in which 23 U.S.C. 402 funds will not participate, but the costs of which will be credited toward the State's matching share, shall be identified in the Problem Solution Narrative of an appropriate Program Module and be included in a related PSP, regardless of whether or not they contribute to the solution of a problem.

Estimated costs of each PSP should be shown on a Program Module Cost Summary Form. The concepts of Zero Base Budgeting should be applied to justify the resource requirements for all planned activities. To estimate the base level of Federal funds available for the programming year, the State should use the previous year's obligation limitation, plus 10 percent, plus any carryover funds. To estimate the base level of Federal funds available for the planning years, 10 percent should be cumulatively added to the estimated Federal funds available for each planning year.

(3) *An Evaluation Plan* explains how the evaluation will be conducted and identifies the criteria to be used in measuring objectives as they relate to Program Module goals. Administrative (performance) evaluation in accordance with chapter IV, Paragraph 5, will be made for all Program Modules to determine how efficiently or productively task activities have been carried out in relation to predetermined qualitative and/or quantitative performance criteria. All impact Program Modules should be subjected to some degree of effectiveness (impact) evaluation within the limits of a State's capability.

Chapter IV defines the types of evaluation applicable to a HSP.

(4) *A Problem Solution Plan (PSP)* specifies problem solution objectives, lists the tasks to be implemented within an established time frame and specifies funding resources to be allocated.

Since a PSP should be developed for each major countermeasure to be implemented in a Program Module, it may be necessary to prepare several PSPs with different objectives, tasks and time frames to achieve the goal(s) of a Program Module.

Separate Problem Solution Plans shall be prepared for FHWA and NHTSA activities.

(5) *A PSP Task Narrative* describes the activities to be carried out under each planned task and explains how the task relates to the PSP objective(s).

Where applicable, tasks should be expressed in terms of quantifiable items of activity with milestones for implementation. Target populations to be serviced by each task item should be identified, and performance indicators expressed in terms of a predicted numerical and/or percentage change from a given pre-task baseline.

f. *Research/Demonstration Requirements for Problem Solution (Part VI) (Optional).* The FHWA and the NHTSA each administer a comprehensive centralized program of research, demonstration, and manpower development with Federal funds under 23 U.S.C. 403 in support of the State and local highway safety programs authorized by 23 U.S.C 402.

Demonstration projects are developed on the basis of need, likelihood of effectiveness, and the results of prior research, and investigation. These projects are awarded on a contract basis with the Federal costs borne by section 403 funds; supplemental funding by State, local, or section 402 funds is dependent on individual project circumstances.

The States and local governments are invited to identify research needs and suggest topics for investigation.

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CHAPTER III—SUBMISSION AND APPROVAL

1. *Purpose.* This chapter provides guidelines and procedures for the submission and approval of a State's Highway Safety Plan (HSP).

2. *Submission.* In accordance with Office of Management and Budget (OMB) Circular No. A-95, Part III, the Governor or his delegated agency shall be given the opportunity to review the HSP and to comment on its relationship to comprehensive and other State plans and programs.

The HSP shall be submitted no later than August 1 of each year. Incomplete Program Modules submitted in accordance with chapter II, 3.e. must be completed and submitted by February 1 of the following year. The Governor or his designated representative shall furnish three copies of the State's HSP to the NHTSA Regional Administrator and two copies to the FHWA Division Administrator.

3. *Environmental impact review.* In accordance with Joint Order FHWA 7550.1/ NHTSA 560-2, dated June 30, 1974, the FHWA Division Administrator and the NHTSA Regional Administrator, in consultation with the Governor's Representative shall review that portion of the HSP for which they are responsible to determine potential impact on the environment.

4. *Approval of the Highway Safety Plan.*— a. *Program Approval.* (1) By September 1, unless extended by mutual agreement, written notice of approval of the HSP, in whole or in part, shall be signed jointly by the FHWA Division Administrator and the NHTSA Regional Administrator and issued to the Governor, together with a statement of conditions, if any, on which approval is granted.

The HSP shall not be approved unless it contains a statement, signed by an authorized State official, certifying that the efficient use of energy and the conservation of energy resources were considered in planning the State's highway safety program and the FHWA Division Administrator and the NHTSA Regional Administrator determine that the HSP describes specific program areas in which energy conservation has been considered and evaluates the prospects for energy conservation in those areas through implementation of the plan.

(2) Authorization to proceed may be given at the same time as written notice of program approval under the circumstances outlined in subparagraph b of this paragraph. If authorization to proceed is not given at the time of program approval, the written notice to the Governor shall contain the following clause:

Program approval only shall not constitute any commitment of Federal funds nor shall it be construed as creating, in any manner, an obligation on the part of the Federal Government to provide Federal funds to the State's HSP.

(3) In the event that it is necessary to disapprove the HSP, in whole or in part, the FHWA Division Administrator and the NHTSA Regional Administrator shall transmit a jointly signed letter to the Governor's Representative setting forth the reasons for disapproval and the specific corrective action recommended. A copy of the letter shall be sent to the Associate Administrator for Traffic Safety Programs, NHTSA and the Associate Administrator for Safety, FHWA. The Governor's Representative may resubmit the HSP after taking appropriate corrective action.

b. *Authorization to Proceed.* (1) Authorization to proceed with implementation of approved Problem Solution Plans (PSPs) in the HSP shall constitute an obligation of Federal funds for the part of the HSP for which such authorization is given. Program Modules should be complete at the time the HSP is submitted for program approval. However, it is within the discretion of NHTSA and FHWA to grant authorization to proceed with implementation of individual PSPs within an incomplete Program Module.

(2) Federal funds obligated for the HSP shall be subject to availability of Federal obligational authority and any other limitations as may be prescribed by statute, administrative action, or conditions of approval. In all cases Federal reimbursement shall be limited to the Federal pro rata share of costs incurred after the date of authorization to proceed.

(3) If the information submitted by the State permits, and if the State has made provision for the State's pro rata share of the cost of the program, authorization to proceed may be given at the same time as written notice of program approval.

(4) The FHWA Division Administrator and the NHTSA Regional Administrator shall each, unilaterally, give authorization to proceed with implementation of PSPs falling within their respective areas of responsibility by written notice to the Governor's Representative, together with a statement of conditions, if any, controlling the PSP's implementation.

(5) Standard Form 424, Report of Federal Action, will be submitted by the NHTSA Regional Administrator to the State Central Information Reception Agency (SCIRA) in accordance with Treasury Circular 1082, and as prescribed in NHTSA Order 463-1, dated March 21, 1977, Subject: Grant-In-Aid Information.

c. *Federal-Aid Agreement.* (1) The Federal-Aid Agreement, HS Form 62, appendix H, exhibit I, shall be executed by the State following approval, in whole or in part, of the current year's portion of the HSP by

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NHTSA or FHWA. Duly authorized NHTSA of FHWA officials shall sign the Agreement subsequent to signature by the State. The Agreement shall indicate the conditions, if any, upon which authorization to proceed is given. Compliance with these conditions by the State may be acknowledged by the Administration which imposed the conditions, thus making it unnecessary to amend the Agreement for this purpose.

(2) The Federal Funds column on the Agreement under the section entitled, "Obligated Program," shall include those amounts to be funded from the current and prior year's obligational limitation. Those funds carried over from prior years should be shown separately on the Agreement.

(3) The estimated total cost of the program shall include all PSPs.

(4) If State, local or Federal funds for any portion of a HSP are not available for obligation at the time the Agreement is executed, such funds should be retained in the "Approved Program" section.

d. *Agreement Modification.* The Modification of Federal-Aid Agreement, HS Form 62A, is to be used to amend the HSP Agreement each time the State is authorized to proceed with any additional part of the HSP. Such modification will be needed to increase or decrease the amount of Federal funds obligated, to decrease the amount of State and/or local funds obligated or to transfer funds from the approved program section to the "Obligated Program" section. The form is also to be used at the final voucher stage to provide additional Federal funds to cover approved PSP revisions and minor PSP changes made in accordance with the provisions set forth in paragraph 5.c.(3) below.

5. *Revision of the HSP.*—a. *Program Modules.* After the HSP is initially approved, a State may revise its HSP by submitting any new Program Module(s) for approval.

b. *Problem Solution Plans.* The State shall revise the current year's portion of its HSP by submitting a revised PSP and, as needed, the related PSP narrative for approval when:

(1) Additional Federal funds become available to fund work not provided within an approved program.

(2) The NHTSA or FHWA approval expresses a condition requiring a change.

(3) [1] The cumulative amount of transfers among direct and indirect cost categories within a PSP or among PSPs exceeds or is expected to exceed:

Five percent or $10,000, whichever is greater, for PSP budgets in excess of $100,000; or

Five percent for PSP budgets of less than $100,000.

(4) The scope or objective of an approved PSP change.

c. *Procedures for revision.* (1) Copies of each revised PSP required by paragraph 5.b. will be submitted as follows:

Three copies to NHTSA Regional Administrator.

Two copies to FHWA Division Administrator.

(2) When a revision of a PSP increases or decreases the amount obligated by either Administration or decreases the amount obligated by the State on the Agreement, the Agreement shall be modified in accordance with Par. 4.d. to reflect the new amounts obligated. No revision shall be made pursuant to this subparagraph without prior approval by FHWA or NHTSA.

(3) When changes in the nature or scope of a PSP do not come within paragraph 5.b., a list of such changes will be submitted at the end of each fiscal year by memorandum to the NHTSA Regional Administrator and FHWA Division Administrator.

6. *Annual updating of the HSP.* Since the HSP provides for advance program planning over a 3 to 5 year period, each successive annual program submitted may represent, in large part, a continuation of Problem Solution Plans implemented in the prior fiscal year. Those PSPs to be continued, in accordance with the Plan, without change from the prior fiscal year, will show only the funding by task for the current program year, with any appropriate changes in the PSP Task Narrative.

Each subsequent annual submittal of the HSP should reflect only those substantive changes in activities and costs resulting from the identification of new problems, the setting of new goals and the development of new Program Modules and Problem Solution Plans.

7. *Matching of Federal Funds.* a. The Federal share of funds payable under the Act as prescribed in 23 U.S.C. 120 and 23 U.S.C. 402(d) shall be computed on the basis of the total costs reported on the Federal-Aid Agreement, HS Form 62 (exhibit 1, appendix H).

b. The Federal share shall not exceed 70 percent (or the applicable sliding scale rate) of the total costs of the HSP as authorized by 23 U.S.C. 120(a) and 23 U.S.C. 402(d).

8. *Reimbursement of Federal share.* a. Joint Order 460-4/7510.1 and FMC 74-4 apply to State claims for Federal participation and reimbursement. In addition, specific funding criteria are contained in the Highway Safety Program manuals and/or Supplements, except to the extent restricted or prohibited by 23 U.S.C. 116 and the Agreement with respect to maintenance, and 23 U.S.C. 402(b)(1)(a) and implementing

[1] OMB Circular A-102, Attachment K, August 24, 1977.

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directives with respect to administrative overhead of the State Agency responsible for administering the State's highway safety program.

b. State claims for reimbursement of the Federal share of the cost incurred under the Agreement shall be submitted on vouchers in accordance with other directives. OMB Circular A-102, Attachment L, provides that States will submit all financial and performance reports within 90 days after the completion date of each PSP. The NHTSA Regional Administrator or the FHWA Division Administrator may grant extensions when requested by the States.

CHAPTER IV—EVALUATION

1. *Purpose.* This chapter defines the types of evaluation and provides requirements for evaluation planning. This chapter does not describe evaluation methods or techniques.

2. *Scope.* This chapter relates only to the State and Community Highway Safety Program, 23 U.S.C. 402.

3. *General.* Evaluation assists management in measuring countermeasure effectiveness and program performance efficiency and serves as an input to other management functions, such as planning, program redirection, countermeasure selection and the assignment of resources.

Requirements for periodic evaluations are included in each Program Standard.

The number of evaluation requirements as well as the complexity of performing program and project evaluation requires careful and comprehensive evaluation planning.

The "how-to" evaluate highway safety activities is described in the manual entitled The Evaluation of Highway Traffic Safety Programs—A Manual for Managers (Report No. DOT-HS-4-00883-7), dated July 31, 1975, NCHRP Report 162, entitled Methods for Evaluating Highway Safety Improvements, TRB 1975, provides an additional reference for evaluation.

4. *Types of evaluation.* For the purposes of this chapter, two types of evaluation are identified, Administrative (Performance) Evaluation and Effectiveness (Impact) Evaluation as defined in appendix A, Glossary of Terms.

5. *Policy.* To be approved, a State's HSP shall contain an overall Statewide evaluation plan, to be included within the discussion under Part III, Overall Statewide Goals.

Administrative (Performance) Evaluation is required for all Program Modules. This administrative evaluation should focus on the contribution of each task to its associated PSP objective. Provision for such administrative evaluations must be made either in the PSPs or in the State's grant agreements with State/local agencies.

Although all impact Program Modules should be subjected to some degree of effectiveness (impact) evaluation, as a minimum the State should perform an in-depth effectiveness evaluation of one (1) selected impact Program Module. The evaluation plan(s) to be used and the criteria for measuring effectiveness will be defined in the Program Module(s).

CHAPTER V—REPORTING PROCEDURES

1. *Purpose.* The purpose of this chapter is to define the reporting requirements of the Highway Safety Plan.

2. *HSP reporting requirements.* Each State shall submit the following reports to the NHTSA Regional Administrator (three copies) and the FHWA Division Administrator (two copies):

a. *Semi-Annual Report of HSP Progress.* The Semi-Annual Report, due June 1, of each year, should address any specific problems associated with implementing the HSP, individual Program Modules and/or PSPs. It should include a discussion of any variances between planned and actual accomplishments and costs, for the first 6 months of the fiscal year and shall include the title VI reporting requirements contained in paragraph 4.

b. *Annual HSP Report.* This report, due December 1 of each year, will provide a narrative of HSP activities for the preceding fiscal year. It will provide the States with the mechanism for reporting all accomplishments and the degree of attainment of goals and objectives. The overall status of individual Problem Solution Plans, in terms of actual task accomplishments shall be documented on the Problem Solution Plan Annual Report for Administrative Evaluation (appendix I). This is the administrative evaluation reporting requirement of the Traffic Safety Programs/Management Information System (TSP/MIS). The results of any effectiveness evaluation(s) and overall Statewide evaluations completed during the report period should be included with the Annual Report, along with the title VI reporting requirements contained in paragraph 4.

3. *Traffic Safety Programs—Management Information System Data Reporting.* Detailed information on Standards Implementation, Program Information and Statewide Statistics will be submitted on a computer turnaround document (OMB No. 04-R-5638). These documents may be submitted at the same time as the HSP submittal, but not later than the following January 1.

4. *Title VI reporting.* The Semi-Annual Report on HSP Progress, and the Annual HSP Report shall include a specific statement on the status of all affirmative action items by Program Module, as well as an overall status report reflecting any change during the Fiscal Year in the State's title VI

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compliance posture as stated in the approved HSP submission.

5. *Minority Business Enterprise Reporting.* To assess the minority business enterprise (MBE) activity occurring within the State and Community Highway Safety Program in accordance with Executive Order 11625, October 13, 1971, DOT Order 4000.7, March 26, 1975, and NHTSA Order 420-1, May 12, 1972, the States shall submit semi-annual reports to the NHTSA Office of Civil Rights (NOA-20) through the Regional Offices. The mid-year report should be submitted to the OCR by the end of April and the cumulative annual report by the end of October. Negative reports are required. The reports shall include the following data for all minority business enterprise and non-white colleges: Name and Address of Contractor/sub Grantee; Date of Contract/Grant; Dollar Amount of Contract/Grant; Purpose of Contract/Grant; Race of Contractor/sub Grantee.[2]

APPENDIX A—GLOSSARY OF TERMS

Administrative (Performance) Evaluation. Administrative evaluation is concerned with measuring the operational efficiency of task activities as they relate to the accomplishment of established goals and objectives. In measuring actual task activities, it compares them to: (a) the baseline or pretask levels of the same activities; (b) the targeted levels of activity established for the task; and (c) the planned use of funds.

Apportionment. A term which refers to a legislatively described division of Federal funds among the States based on prescribed formulas.

Appropriation. An Act of Congress which makes funds available for expenditure with specific limitations as to amount, purpose, and duration. Usually, it permits money previously authorized and apportioned to be obligated and payments made. For the highway construction program operating under contract authority, appropriations specify amounts of funds which Congress will make available to liquidate prior obligations.

Authorization. Basic substantive legislation which empowers an agency to implement a particular program and which usually established an upper limit on the amount of funds which can be appropriated for that program.

Countermeasure. A specific activity, or related activities, designed to contribute to the solution of an identified problem.

Effectiveness (Impact) Evaluation. A determination of the extent to which task operations and activity have contributed to the achievement of an objective related to crash involvement. Three aspects of an impact evaluation are:

1. Determination of the change in crash involvement.

2. Determination of the relationship of task activities to achieving this change.

3. Determination of the relationship of costs to benefits derived from the task activities and accomplishments.

Goal. A long term achievement target which may state incrementally the principal changes or outcomes planned. It relates to, and expresses in clearly quantified, time-framed and measurable terms one or more of the purposes of a Program Module. The goal of an Impact Module is expressed in terms of predicted change in accidents, fatalities and/or injuries, over time. Systems Support Module goals relate to the achievement of activities planned to correct identified deficiencies.

Highway Safety Plan. This Plan (formerly Comprehensive Plan and Annual Work Program) is the Governor's combined multiyear legislative, organizational, operational, and financial plan, in accordance with uniform standards promulgated by the Secretary, submitted by the State and approved by the Secretary under 23 U.S.C. 402, designed to reduce traffic accidents and deaths, injuries, and property damage.

Impact Problem. Highway safety problems that can be related to accidents/fatalities/injury change through the application of countermeasures.

Milestone. A major identifiable and recognizable event in a program which can be measured in time. Milestones are essential characteristics of any scheduled activity which denote advancement toward the goals and objectives.

Objective. A shorter term safety target than a goal, expressing in clearly quantified, time-framed and measurable terms the planned levels of program performance to be achieved. The objective thus supports a goal and relates to a problem solution.

Obligations. Commitments made by Federal agencies to pay out money, as distinct from the actual payments or disbursement of funds for repayment of obligations incurred. Generally, obligations are incurred after the enactment of budget authority by the Congress.

Performance Indicator. A quantifiable measure of the planned results of activity inputs (i.e., training, equipment, manpower, and facilities) expressed in terms of change in level of activity. They provide the base for determining the degree of achievement of established objectives.

Problem Area. A grouping of impact or systems support problems possessing common contributory characteristics.

Problem Identification. A process of analyzing: (1) Traffic records and other infor-

[2] To be coded as: 1—Black, 2—Spanish Surname, 3—American Indian, 4—Oriental, 5—Aleut and Eskimo, 7—Other.

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mational resources to isolate impact problems; and (2) the existing traffic safety system to isolate systems support problems.

Problem Solution Plan. As the basic highway safety programming unit, it specifies the objective(s) which relates to the Program Module goal, the specific tasks to be undertaken and the estimated costs to be incurred.

Program Module. A planning/programming unit describing an identified problem area, proposed solutions and the details for implementation of corrective action.

Systems Support Problem. A deficiency in a vital traffic safety program function, the correction of which may not be directly related to a change in accidents, fatalities and/or injuries.

Task. An activity or activities representing a readily identifiable basic unit of work identified with only one standard area and capable of being scheduled and costed.

APPENDIX B—STATE OF ————————

CERTIFICATE OF COMPLIANCE WITH REQUIREMENTS OF 23 U.S.C. 402 (b)(1), 92 STAT. 3318 AND E.O. 12185

I hereby certify that:

(a) The Governor is responsible for the administration of the State's highway safety program through the ———————— (Name of State Agency) in accordance with ———————— (Statute, Executive Order, Directive) dated ————.

(b) The political subdivisions of the State are authorized by ———————— (Statute, Executive Order, Directive) dated ————, to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform standards promulgated by the Secretary of Transportation under 23 US.C. 402.

(c) At least 40 per centum of all Federal funds apportioned to the State under 23 U.S.C. 402 for any fiscal year will be expended by the political subdivisions of the State in carrying out local highway safety programs authorized in accordance with 23 U.S.C. 402(b)(1)(B), except to the extent that this requirement has been waived by the Secretary of Transportation in accordance with 23 U.S.C. 402(b)(2).

(d) The aggregate expenditure of funds of the State and its political subdivisions, exclusive of Federal funds, for highway safety programs will be maintained at a level which does not fall below the average level of such expenditures for Fiscal Years 1965 and 1966.

(e) The State's highway safety program provides for a comprehensive driver training program which includes the elements specified in 23 U.S.C. 402(b)(1)(E).

(f) The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced after July 1, 1976, at all pedestrian crosswalks throughout the State.

(g) The efficient use of energy and the conservation of energy resources have been considered in planning the State's highway safety program.

————————————————————

(Official Authorized by the Governor)

————————————————————

(Title

————————————————————

(Date)

CHAPTER III—ANNUAL WORK PROGRAM

[RESERVED]

SUPPLEMENT C [RESERVED]

SUPPLEMENT D

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID

(*NHTSA Order 460-4/FHWA Order 7510.1*)

1. *Purpose.* To implement DOT Order 4600.9A dated December 27, 1972, which, in turn, prescribes procedures applicable to all DOT operating administrations in implementation of Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grant-In-Aid to State and local Governments, dated October 19, 1971.

2. *Authority.* OMB Circular A-102 requires Federal agencies to implement grant administration standards which will be uniformly employed on a national basis for all grant-in-aid programs. These standards are published as Attachments to this Order. Supplementary guidance regarding these standards is provided below.

3. *Background.* The OMB, in cooperation with the States and ten Federal agencies engaged in domestic grant-in-aid programs, developed Circular A-102 to simplify, standardize, decentralize, and modernize the Federal grant process. Most of the requirements expressed herein parallel the principles, standards, and requirements set forth in existing policy issuances for the State and Community Highway Safety Program. NHSB Notice N462, State and Community Highway Safety Program Principles for De-

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termining Reimbursement to States dated June 7, 1968, and Joint NHTSA/FHWA Order 960-2/HSPM, Transmittal 33, Highway Safety Program Manual Volume 103—Annual Work Program, dated December 29, 1972, are referenced in this Order for interim supplemental guidance. In the event of any conflicting policies this Order has precedence over any and all other Notices or Orders which address Grant-In-Aid requirements. Any conflicting or inconsistent policies reflected in any other Notices or Orders will be changed accordingly at the earliest possible date. The Attachments to this Order are lettered to parallel the Attachments of Circular A-102 for ease of reference.

4. *Responsibilities.* Regional Administrators NHTSA and FHWA, under their delegated authority for administering the State and Community Highway Safety Program standards, are responsible for advising the States of the implementation of these requirements and for periodic evaluation of the effectiveness of the implementation.

5. *Procedure.* Each State is required to establish operating procedures consistent with the applicable standards. Each standard is discussed briefly as to applicability below.

a. *Cash Depositories. (Attachment A)* The requirement for use of minority banks, when available, is applicable to all advances, whether by check or letter of credit, under the section 402 grant program. These advances in every instance are also subject to the requirements for deposit in a bank with FDIC insurance coverage, Paragraph 3 of Attachment A.

b. *Bonding and Insurance. (Attachment B)* The minimum requirements for bonding and insurance for construction contracts exceeding $100,000 in total cost are applicable whenever Federal funds participate in the cost of construction or facility improvement.

c. *Retention and Custodial Requirements for Records. (Attachment C)* These requirements have generally been in effect in the State and Community Highway Safety Program since the inception of the program. All provisions of this standard are applicable. Adequate records management is a primary administrative requisite. Availability of records for audit and public disclosure on request of duly authorized persons is required.

d. *Waiver of "Single" State Agency Requirements. (Attachment D)*[1] The Highway Safety Act of 1970, section 203(a), amends section 402(b)(2)(A) of title 23 U.S.C., and precludes the Waiver of a "single" State Agency.

e. *Program Income. (Attachment E)* All provisions of this standard are applicable to the State and Community Highway Safety Program. Program income meeting the criteria of the attached standard shall be included in the annual work program for the fiscal year for which programmed, identified as to the highway safety program standard area to which related. When received, program income items shall be reported as negative expenditure items on State program reimbursement vouchers as separate line items, either immediately adjacent to the gross costs reported or on the last line or lines of the voucher as a deduction from total gross program costs. For example, royalties derived from the sale of copyrighted driver education materials would be reported in the gross amount identified as program standard 304 as a negative expenditure on the line adjacent to the reported expenditures for the 304 standard area, or as a deduction from a sub-total of the gross program costs, including the cost of reproducing the materials. Appropriate substantiating records and documents shall be maintained within the State system for audit purposes.

f. *Matching Share. (Attachment F)* For purposes of the State and Community Highway Safety Program, States may use their ongoing Highway Safety expenditures of State and local funds for purposes of matching Federal funds on a total program basis. Attachment F provides criteria for defining and computing the matching shares and the valuation of in-kind contributions, if any, of real property, equipment, goods and services directly benefitting the program. Most of these criteria have been established and observed in the operation of the State and Community Highway Safety Program. The item, F. 4.a., *Valuation of volunteer services* is new to the program. It is to be noted that the hours of services must be documented in a standard manner and the computed rate of donated services must be consistent with rates paid for similar skills in the labor market.

g. *Standards for Grantee Financial Management Systems. (Attachment G)* Regional Administrators, under existing delegations of authority, shall make periodic evaluations of the States' financial management systems to determine that as a minimum these standards are met. It is an excellent summary of systems requirements.

h. *Financial Reporting Requirements. (Attachment H)* The Office of Management and Budget has waived this requirement for the State and Community Highway Safety Program. It is republished herein for optional use by the States where subgrantees of the State may have adopted its use in presenting financial reports on other Federal assistance programs. By recognizing that

[1] Attachment D was not furnished as part of the NHTSA/FHWA Order.

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the Annual Work Program concept is an advanced program management concept it was evident that mandatory implementation of Attachment H would not have simplified the vouchering process from the State level to the Region. Attachment H is geared to the individual grant management process prescribed in Attachment M of A-102, from which the State and Community Program is exempt.

i. *Monitoring and Reporting of Program Performance.* (*Attachment I*) These provisions have been implemented previously in Volume "O". However, this emphasizes the responsibility on the grantee management to monitor and report on performance of grant activities. It places increased emphasis on management by objectives and comparison of accomplishments with planned goals. Grantors can then place greater reliance on the grantee management.

j. *Grant Payment Requirements.* (*Attachment J*) Criteria in this attachment establishes methods for making grant payments via letter of credit, by Treasury check advance or by reimbursement.

k. *Budget Revision Procedures.* (*Attachment K*) volume 103, chapter VI, paragraph 2 sets forth criteria for program revision. A-102, Attachment K is more restrictive in that Federal grantor approval is required of any cumulative cost transfers among direct cost object classes which exceed $10,000 or five percent, whichever is greater. Volume 103 permits grantees to make revisions among tasks in a subelement (SEP) without prior approval, provided that the revision is less than ten percent of the total cost of the SEP. Procedures in Volume 103 will be revised to conform with Attachment K. Accordingly, Regional Administrators are responsible for advising the States concerning these requirements effective upon receipt of the Order.

l. *Grant Closeout Procedures.* (*Attachment L*) This procedure is applicable to the State and Community Highway Safety Program at the Annual Work Program (AWP) level. Recognizing the AWP as a single grant to the State, the closeout of each SEP is the function of the State. A final report summarizing the completed AWP shall be required in accordance with these procedures.

m. *Standard Forms for Applying for Federal Assistance.* (*Attachment M*[1]) This procedure is not applicable to the State and Community Highway Safety Program because the AWP does not require grantees to apply for Federal funds on a "project" basis.

n. *Property Management Standards.* (*Attachment N*) These standards are applicable to the State and Community Highway Safety Program. It is the responsibility of Regional Administrators to review existing property management procedures in the States in light of these standards.

o. *Procurement Standards.* (*Attachment O*) These standards are applicable to the State and Community Highway Safety Program. Regional Administrators are responsible for determining compliance therewith by the States.

[1] Attachment M was not published as part of the NHTSA/FHWA Order.

ATTACHMENT A

Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments

Cash Depositories

1. Except for situations described in 2, 3, and 4, below, no grant program shall:

a. Require physical segregation of cash depositories for Federal grant funds which are provided to a State or local government.

b. Establish any eligibility requirements for cash depositories, in which Federal grant funds are deposited by State or local governments.

2. A separate bank account may be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved.

3. Any moneys advanced to the State or local governments which are determined to be "public moneys" (owned by the Federal Government) must be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage must be collaterally secure, as provided for in 12 U.S.C. 265.

4. Consistent with the national goal of expanding the opportunities for minority business enterprises, State and local governments shall be encouraged to use minority banks.

ATTACHMENT B

Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments

Bonding and Insurance

1. Except for situations described in 2 and 3, below, Federal grantor agencies shall not impose bonding and insurance requirements, including fidelity bonds, over and above those normally required by the State or local units of government.

2. A State or local unit of government receiving a grant from the Federal Government which requires contracting for construction or facility improvement shall follow its own requirements relating to bid guarantees, performance bonds, and pay-

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ment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

a. *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fullfillment of all the contractor's obligations under such contract.

c. *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3. Where the Federal Government guarantees the payment of money borrowed by the grantee, the Federal grantor agency may, at its discretion, require adequate bonding and insurance if the bonding and insurance requirements of a State or local government are not deemed to be sufficient to protect adequately the interest of the Federal Government.

ATTACHMENT C

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Retention and Custodial Requirements for Records

1. Federal grantor agencies shall not impose record retention requirements over and above those established by the State or local governments, receiving Federal grants except that financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of three years, with the following qualifications:

a. The records shall be retained beyond the three-year period if audit findings have not been resolved.

b. Records for nonexpendable property which was acquired with Federal grant funds shall be retained for three years after its final disposition.

c. When grant records are transferred to or maintained by the Federal grantor agency, the three-year retention requirement is not applicable to the grantee.

2. The retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

3. State and local governments should be authorized, by the Federal grantor agency, if they so desire, to substitute microfilm copies in lieu of original records.

4. The Federal grantor agency shall request transfer of certain records to its custody from State and local governments when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping a Federal grantor agency may make arrangements with State and local governments to retain any records which are continuously needed for joint use.

5. The head of the Federal grantor agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

6. Unless otherwise required by law, no Federal grantor agency will place restrictions on State and local governments which will limit public access to the State and local governments' records except when records must remain confidential for the following reasons:

a. Prevent a clearly unwarranted invasion of personal privacy.

b. Specifically required by Executive order or statute to be kept secret.

c. Commercial or financial information obtained from a person or a firm on a privileged or confidential basis. son or a firm on a privileged or confidential basis.

d. Any other information which can be exploited for the purpose of personal gains.

ATTACHMENT D—[RESERVED]

ATTACHMENT E

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Program Income

1. Federal grantor agencies shall apply the standards set forth in this Attachment in requiring State and local government grantees to account for program income related to projects financed in whole or in part with Federal grant funds. For the purpose of this Attachment, program income means gross income earned by the grant-supported activities.

2. In accordance with section 203 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), the States and any agency or instrumentality of a State shall not be

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held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes.

3. Units of local government shall be required to return to the Federal Government interest earned on advances of grant-in-aid funds in accordance with a decision of the Comptroller General of the United States (42 Comp. Gen. 289).

4. Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with Attachment N to this Circular pertaining to Property Management.

5. Royalties received from copyrights and patents during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the funds already committed to the program or deducted from total project costs for the purpose of determining the net costs on which the Federal share of costs will be based. After termination or completion of the grant, the Federal share of royalties in excess of $200 received annually shall be returned to the Federal grantor agency in the absence of other specific agreements between the grantor agency and the grantee. The Federal share of royalties shall be computed on the same ratio basis as the Federal share of the total project cost.

6. All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be:

a. Added to funds committed to the project by the grantor and grantee and be used to further eligible program objectives, or

b. Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

7. Federal grantor agencies shall require the grantees to record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

ATTACHMENT F

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

MATCHING SHARE

1. This Attachment sets forth criteria and procedures for the allowability and evaluation of cash and in-kind contributions made by State and local governments in satisfying matching share requirements of Federal grants.

2. The following definitions apply for the purpose of this Attachment:

a. *Project costs.* Project costs are all necessary charges made by a grantee in accomplishing the objectives of a grant during the grant period. For matching share purposes, project costs are limited to the allowable types of costs as set forth in NHSB Notice N462.

b. *Matching share.* In general, matching share represents that portion of project costs not borne by the Federal Government. Usually, a minimum percentage for matching share is prescribed by program legislation, and matching share requirements are included in the grant agreements.

c. *Cash contributions.* Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other grants may be considered as grantee's cash contributions.

d. *In-kind contributions.* In-kind contributions represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically identifiable to the grant program. When authorized by Federal legislation, property purchased with Federal funds may be considered as grantee's in-kind contributions.

3. General guidelines for computing matching share are as follows:

a. Matching share may consist of:

(1) Charges incurred by the grantee as project costs. Not all charges require cash outlays during the grant period by the grantee; examples are depreciation and use charges for buildings and equipment.

(2) Project costs financed with cash contributed or donated to the grantee by other public agencies and institutions, and private organizations and individuals.

(3) Project costs represented by services and real or personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.

b. All in-kind contributions shall be accepted as part of the grantee's matching share when such contributions meet the following criteria:

(1) Are identifiable from the grantee's records;

(2) Are not included as contributions for any other federally-assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives; and

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(4) Conform to other provisions of this Attachment.

4. Specific procedures for the grantees in placing the value on in-kind contributions from private organizations and individuals are set forth below:

a. *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved program.

(1) *Rates for volunteer services.* Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the State or local government. In cases where the kinds of skills required for the federally-assisted activities are not found in the other activities of the grantee, rates used should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) *Volunteers employed by other organizations.* When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

b. *Valuation of materials.* Contributed materials include office supplies, maintenance supplies, or workshop and classroom supplies. Prices assessed to donated materials included in the matching share should be reasonable and should not exceed the cost of the materials to the donor or current market prices, whichever is less, at the time they are charged to the project.

c. *Valuation of donated equipment, buildings, and land, or use of space.*

(1) The method used for charging matching share for donated equipment, buildings, and land may differ depending upon the purpose of the grant as follows:

(a) If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.

(b) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made; and fair rental charges for land may be made provided that the grantor agency has approved the charges.

(2) The value of donated property will be determined as follows:

(a) *Equipment and buildings.* The value of donated equipment or buildings should be based on the donor's cost less depreciation or the current market prices of similar property, whichever is less.

(b) *Land or use of space.* The value of the donated equipment or buildings should be established by an independent appraiser (i.e., private realty firm or GSA representatives) and certified by the responsible official of the grantee.

d. *Valuation of other charges.* Other necessary charges incurred specifically for and in direct benefit to the grant program in behalf of the grantee may be accepted as matching share provided that they are adequately supported and permissible under the law. Such charges must be reasonable and properly justifiable.

5. The following requirements pertain to the grantee's supporting records for in-kind contribution from private organizations and individuals:

a. The number of hours of volunteer services must be supported by the same methods used by the grantee for its employees.

b. The basis for determining the charges for personal services, material, equipment, buildings, and land must be documented.

ATTACHMENT G

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

STANDARDS FOR GRANTEE FINANCIAL MANAGEMENT SYSTEMS

1. This Attachment prescribes standards for financial management systems of grant-supported activities of State and local governments. Federal grantor agencies shall not impose additional standards on grantees unless specifically provided for in other Attachments to this Circular. However, grantor agencies are encouraged to make suggestions and assist the grantees in establishing or improving financial management systems when such assistance is needed or requested.

2. Grantee financial management systems shall provide for:

a. Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements. When a Federal grantor agency requires reporting on an accrual basis and the grantee's accounting records are not kept on that basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

b. Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

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c. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

d. Comparison of actual with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.

e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury through his commercial bank as close as possible to the time of making the disbursements.

f. Procedures for determining the allowability and allocability of costs in accordance with the provisions of NHSB Notice N462 and Volume 103 of the Highway Safety Manual.

g. Accounting records which are supported by source documentation.

h. Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and administrative requirements. The grantee will schedule such audit with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

i. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph 2 above.

ATTACHMENT H

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Financial Reporting Requirements

1. This Attachment prescribes requirements for grantees to report financial information to grantor agencies and to request advances and reimbursement when a letter-of-credit method is not used, and promulgates standard forms incident thereto.

2. The following definitions apply for the purposes of this Attachment:

a. *Accrued expenditures.* Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) amounts becoming owed under programs for which no current services or performance are required.

b. *Accrued income.* Accrued income is the earnings during a given period which is a source of funds resulting from (1) services performed by the grantee, (2) goods and other tangible property delivered to purchasers, and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

c. *Disbursements.* Disbursements are payments in cash or by check.

d. *Federal funds authorized.* Funds authorized represent the total amount of the Federal funds authorized for obligations and establish the ceilings for obligation of Federal funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

e. *In-kind contributions.* In-kind contributions represent the value of noncash contributions provided by (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of charges for real property and equipment, and value of goods and services directly benefiting and specifically identifiable to the grant program. When authorized by Federal legislation property purchased with Federal funds may be considered as grantee's in-kind contributions.

f. *Obligations.* Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

g. *Outlays.* Outlays represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

h. *Program income.* Program income represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

i. *Unobligated balance.* The unobligated balance is the portion of the funds authorized by the Federal agency which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

j. *Unpaid obligations.* Unpaid obligations represent the amount of obligations incurred by the grantee which have not been paid.

3. Only the following forms will be authorized for obtaining financial information

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from State and local governments for grants-in-aid programs.

a. *Financial Status Report (Exhibit 1).*

(1) Each Federal grantor agency shall require grantees to use the standard Financial Status Report to report the status of funds for all nonconstruction grant programs. The grantor agencies may, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (paragraph 4a) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the grant when the Request for Advance or Reimbursement form is used only for advances.

(2) The grantor agency shall prescribe whether the report shall be on a cash or accrual basis. If the grantor agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

(3) The grantor agency shall determine the frequency of the Financial Status Report for each grant program considering the size and complexity of the particular program. However, the report shall not be required more frequently than quarterly or less frequently than annually. Also, a final report shall be required at the completion of the grant.

(4) The original and two copies of the Financial Status Report shall be submitted 30 days after the end of each specified reporting period. In addition, final reports shall be submitted 90 days after the end of the grant period or the completion of the project or program. Extensions to reporting due dates may be granted when requested by the grantee.

b. *Report of Federal Cash Transactions (Exhibit 2).*

(1) When funds are advanced to grantees through letters of credit or with Treasury checks, the Federal grantor agencies shall require each grantee to submit a Report of Federal Cash Transactions. The Federal grantor agency shall use this report to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant or project from the grantees.

(2) Grantor agencies may require forecasts of Federal cash requirements in the Remarks section of the report.

(3) When practical and deemed necessary, the grantor agencies may require grantees to report in the Remarks section the amount of cash in excess of three days' requirements in the hands of subgrantees or other secondary recipients and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) Grantor agencies may accept the identical information from the grantees in a machine-usable format in lieu of the Report of Federal Cash Transactions.

(5) Grantees shall be required to submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. For those grantees receiving annual grants totalling one million dollars or more, the Federal grantor agencies may require a monthly report.

(6) Grantor agencies may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed $10,000 per grantee provided that such advances are monitored through other forms contained in this Attachment or the grantee's accounting controls are adequate to minimize excessive Federal advances.

4. Except as noted below, only the following forms will be authorized for the grantees in requesting advances and reimbursements.

a. *Requests for Advance or Reimbursement (Exhibit 3).*

(1) Each grantor agency shall adopt the Request for Advance or Reimbursement as the standard form for all nonconstruction grant programs when letters of credit or predetermined automatic advance methods are not used. Agencies, however, have the option of using this form for construction programs in lieu of the Outlay Report and Request for Reimbursement for Construction Programs (paragraph 4b).

(2) Grantees shall be authorized to submit requests for advances or reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of the Request for Advance or Reimbursement.

b. *Outlay Report and Request for Reimbursement for Construction Programs (Exhibit 4).*

(1) Each grantor agency shall adopt the Outlay Report and Request for Reimbursement for Construction Programs as the standard format to be used for requesting reimbursement for construction programs. The grantor agencies may, however, have the option of substituting the Request for Advance or Reimbursement (paragraph 4a) in lieu of this form when the grantor agencies determine that the former provides adequate information to meet their needs.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of the Outlay Report and Request for Reimbursement for Construction Programs.

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5. When the grantor agencies need additional information in using these forms, the following shall be observed:

a. When necessary to comply with legislative requirements, grantor agencies shall issue instructions to require grantees to submit such information under the Remarks section of the reports.

b. When necessary to meet specific program needs, grantor agencies shall submit the proposed reporting requirements to the Office of Management and Budget for approval under the exception provision of this Order.

c. The grantor agency, in obtaining information as in paragraphs a and b above, must also comply with report clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

6. Federal grantor agencies are authorized to reproduce these forms. The forms for reproduction purposes can be obtained from the Office of Management and Budget and are available both in letter size and legal size; the larger size provides more space where large dollar amounts are involved.

Exhibits 1 through 4 consist of forms which are not published pursuant to 1 CFR 18.11. The forms are available for inspection and copying at those locations specified in 49 CFR part 7, appendixes D and H.

ATTACHMENT I

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Monitoring and Reporting of Program Performance

1. This Attachment sets forth the procedures for monitoring and reporting program performance under Federal grants. These procedures are designed to place greater reliance on State and local governments to manage the day-to-day operations of the grant-supported activities.

2. Grantees shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

3. Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

a. A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons for slippage in those cases where established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Grantees shall submit the performance reports to grantor agencies with the Financial Status Reports, in the frequency established by Attachment H of this Order. The grantor agency shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

5. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

6. If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K to this Order, the grantee shall submit a request for budget revision.

7. The grantor agency shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems.

b. Provide such technical assistance as may be required.

ATTACHMENT J

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Grant Payment Requirements

1. This Attachment establishments required methods of making grant payments to State and local governments that will minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the United States Treasury to the grantee, whether such disbursement

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occurs prior to or subsequent to the transfer of funds.

2. Grant payments are made to grantees through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this Attachment:

a. *Letter of credit.* A letter of credit is an instrument certified by an authorized official of a grantor agency which authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve Bank and the grantee's commercial bank, in accordance with the provisions of Treasury Circular No. 1075.

b. *Advance by Treasury check.* An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request or through the use of predetermined payment schedules before payments are made by the grantee.

c. *Reimbursement by Treasury check.* A reimbursement by Treasury check is a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

3. Except for construction grants for which the letter-of-credit method is optional, the letter-of-credit funding method shall be used by grantor agencies where all of the following conditions exist:

a. When there is or will be a continuing relationship between a grantee and a Federal grantor agency for at least a 12-month period and the total amount of advances to be received within that period from the grantor agency is $250,000, or more, as prescribed by Treasury Circular No. 1075.

b. When the grantee has established or demonstrated to the grantor the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

c. When the grantee's financial management system meets the standards for fund control and accountability prescribed in Attachment G to this Order, "Standards for Grantee Financial Management Systems."

4. The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph 3 above except those in 3.a.

5. The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either or both of paragraphs 3.b. and 3.c. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Federal grant assistance constitutes a minor portion of the program.

6. Unless otherwise required by law, grantor agencies shall not withhold payments for proper charges made by State and local governments at any time during the grant period unless (a) a grantee has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (b) the grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the grantor may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

7. Attachment H of this Order, "Financial Reporting," provides for the procedures and forms for requesting advances or reimbursements.

ATTACHMENT K

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Budget Revision Procedures

1. This Attachment promulgates criteria and procedures to be followed by Federal grantor agencies in requiring grantees to report deviations from grant budgets and to request approvals for budget revisions.

2. The grant budget as used in this Attachment means the approved financial plan for both the Federal and nonfederal shares to carry out the purpose of the grant. This plan is the financial expression of the project or program as approved during the grant application and award process. It should be related to performance for program evaluation purposes whenever appropriate and required by the grantor agency.

3. For nonconstruction grants, State and local governments shall request prior approvals promptly from grantor agencies for budget revisions whenever:

a. The revision results from changes in the scope or the objective of the grant-supported program.

b. The revision indicates the need for additional Federal funding.

c. The grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or five percent of the grant budget, whichever is greater. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the grantor agency shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

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d. The grant budget is $100,000, or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the grantor agency shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

e. The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

f. The revisions pertain to the addition of items requiring approval in accordance with the provisions Highway Safety Program Manual, Volume 103.

4. All other changes to nonconstruction grant budgets, except for the changes described in paragraph 6, do not require approval. These changes include (a) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget and (b) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

5. For construction grants, State and local governments shall request prior approvals promptly from grantor agencies for budget revisions whenever:

a. The revision results from changes in the scope or the objective of the grant-supported programs.

b. The revision increases the budgeted amounts of Federal funds needed to complete the project.

6. When a grantor agency awards a grant which provides support for both construction and nonconstruction work, the grantor agency may require the grantee to request prior approval from the grantor agency before making any fund or budget transfers between the two types of work supported.

7. For both construction and nonconstruction grants, grantor agencies shall require State and local governments to notify the grantor agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee by more than $5,000 or 5 percent of the Federal grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

8. When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of Highway Safety Program Manual, Volume 103.

9. Within 30 days from the date of receipt of the request for budget revisions, grantor agencies shall review the request and notify the grantee whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, the grantor shall inform the grantee in writing as to when the grantee may expect the decision.

ATTACHMENT L

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Grant Closeout Procedures

1. This Attachment prescribes uniform closeout procedures for Federal grants to State and local governments.

2. The following definitions shall apply for the purpose of this Attachment:

a. *Grant closeout.* The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

b. *Date of completion.* The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

c. *Termination.* The termination of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

d. *Suspension.* The suspension of a grant is an action by a Federal grantor agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the grantor agency.

e. *Disallowed costs.* Disallowed costs are those charges to a grant which the grantor agency or its representative determines to be unallowable. NHSB Notice N462, dated June 7, 1968.

3. All Federal grantor agencies shall establish grant closeout procedures which include the following requirements:

a. Upon request, the Federal grantor agency shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

b. The grantee shall immediately refund to the grantor agency any unencumbered balance of cash advanced to the grantee.

c. The grantor agency shall obtain from the grantee within 90 days after the date of completion of the grant all financial performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee.

d. The grantor agency shall make a settlement for any upward or downward adjust-

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ments to the Federal share of costs after these reports are received.

e. The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of Attachment N to this Order.

f. In the event a final audit has not been performed prior to the closeout of the grant, the grantor agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

4. All Federal grantor agencies shall provide procedures to be followed when a grantee has failed to comply with the grant award stipulations, standards, or conditions. When that occurs, the grantor agency may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph 5.a. The grantor agency may allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of NHSB Notice N462.

5. Subject to the provisions of paragraph 7 of the basic Circular of which this Attachment references, all Federal grantor agencies shall provide for the systematic settlement of terminated grants including the following:

a. *Termination for cause.* The grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The grantor agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the grantor agencies under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

b. *Termination for convenience.* The grantor agency or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Federal agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

ATTACHMENT M—[RESERVED]

ATTACHMENT N

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Property Management Standards

1. This Attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments. Federal grantor agencies shall require State and local governments to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this Attachment are included.

2. The following definitions apply for the purpose of this Attachment:

a. *Real property.* Real property means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. *Personal property.* Personal property means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

c. *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

d. *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. *Excess property.* Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs.

3. Each Federal grantor agency shall prescribe requirements for grantees concerning the use of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee

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determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with these authorized for support by the grantor.

c. When the real property is no longer needed as provided in a. and b., above, the grantee shall return all real property furnished or purchased wholly with Federal grant funds to the control of the Federal grantor agency. In the case of property purchased in part with Federal grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

4. Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Federal Government or acquired with Federal funds are set forth below:

a. *Nonexpendable personal property acquired with Federal funds.* When nonexpendable personal property is acquired by a grantee wholly or in part with Federal funds, title will not be taken by the Federal Government except as provided in paragraph 4a(4), but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(1) The grantee shall retain the property acquired with Federal funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Federal funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with other Federal grants it has received in the following order of priority:

(a) Other grants of the same Federal grantor agency needing the property.

(b) Grants of other Federal agencies needing the property.

(2) When the grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(a) *Nonexpendable property with an acquisition cost of less than $500 and used four years or more.* The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) *All other nonexpendable property.* The grantee may retain the property for its own use provided that a fair compensation is made to the original grantor agency for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the grant program to the current fair market value of the property.

(3) If the grantee has no need for the property, disposition of the property shall be made as follows:

(a) *Nonexpendable property with an acquisition cost of $1,000 or less.* Except for that property which meets the criteria of (2)(a) above, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed in accordance with (iii) below.

(b) *Nonexpendable property with an acquisition cost of over $1,000.* The grantee shall request disposition instructions from the grantor agency. The Federal agency shall determine whether the property can be used to meet the agency's requirement. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration (GSA) by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal grantor agency shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(i) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Federal grantor agency for such costs incurred in its disposition.

(iii) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(4) Where the grantor agency determines that property with an acquisition cost of $1,000 or more and financed solely with Federal funds is unique, difficult, or costly to replace, it may reserve title to such property, subject to the following provisions:

(a) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

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(b) The grantor agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Federal grant for which it was acquired. If the grantor agency fails to issue disposition instructions within 120 days, the grantee shall apply the standards of 4a(1), 4a(2)(b), and 4a(3)(b).

b. *Federally-owned nonexpendable personal property.* Unless statutory authority to transfer title has been granted to an agency, title to Federally-owned property (property to which the Federal Government retains title including excess property made available by the Federal grantor agencies to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the grantor agency for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of Federal agency review.

5. The grantees' property management standards for nonexpendable personal property shall also include the following procedural requirements:

a. Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the grantor agency for its share.

b. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

c. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

d. Adequate maintenance procedures shall be implemented to keep the property in good condition.

e. Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

6. When the total inventory value of any unused expendable personal property exceeds $500 at the expiration of need for any Federal grant purposes, the grantee may retain the property or sell the property as long as he compensates the Federal Government for its share in the cost. The amount of compensation shall be computed in accordance with 4a(2)(b).

7. Specific standards for control of intangible property are provided as follows:

a. If any program produces patents, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to the grantor agency. The grantor agency shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889).

b. Where the grant results in a book or other copyrightable material, the author or grantee is free to copyright the work, but the Federal grantor agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

ATTACHMENT O

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS

Procurement Standards

1. This Attachment provides standards for use by the State and local governments in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal grant funds. These standards are furnished to insure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional requirements shall be imposed by the Federal agencies upon the grantees unless specifically required by Federal law or Executive orders.

2. The Standards contained in this Attachment do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the grantor agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

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3. Grantees may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth as follows:

a. The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by State or local law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee officers, employees, or agents, or by contractors or their agents.

b. All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

c. The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(1) Proposed procurement actions shall be reviewed by grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of the procurement, and when so used the specific features of the named brand which must be met by offerors should be clearly specified.

(3) Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds.

(4) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (6) below is necessary to accomplish sound procurement. However, procurements of $2,500 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations.

(6) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(a) The public exigency will not permit the delay incident to advertising;

(b) The material or service to be procured is available from only one person or firm; (All contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the grantor agency for prior approval.)

(c) The aggregate amount involved does not exceed $2,500;

(d) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

(e) The material or services are to be procured and used outside the limits of the United States and its possessions;

(f) No acceptable bids have been received after formal advertising;

(g) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture;

(h) Otherwise authorized by law, rules, or regulations.

Notwithstanding the existence of circumstances justifying negotiation, competition

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shall be obtained to the maximum extent practicable.

(7) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(8) Procurement records or files for purchases in amounts in excess of $2,500 shall provide at least the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(9) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

4. The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subgrants:

a. Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts, amounts for which are in excess of $2,500, shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. In all contracts for *construction* or facility improvement awarded in excess of $100,000, grantees shall observe the bonding requirements provided in Attachment B to this Circular.

d. All contracts and subgrants in excess of $10,000 shall include provisions for compliance with Executive Order No. 11246, entitled, "Equal Employment Opportunity," as supplemented in Department of Labor Regulations (41 CFR part 60). Each contractor or subgrantee shall be required to have an affirmative action plan which declares that it does not discriminate on the basis of race, color, religion, creed, national origin, sex, and age and which specifies goals and target dates to assure the implementation of that plan. The grantee shall establish procedures to assure compliance with this requirement by contractors or subgrantees and to assure that suspected or reported violations are promptly investigated.

e. All contracts and subgrants for *construction* or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

f. When required by the Federal grant program legislation, all *construction* contracts awarded by grantees and subgrantees in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

g. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for *construction* contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health

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standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

h. Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Federal grantor agency and the grantee. The contractor shall be advised as to the source of additional information regarding these matters.

i. All negotiated contracts (except those of $2,500 or less awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

j. Each contract of an amount in excess of $2,500 or less) awarded by grantees shall shall provide that the recipient will comply with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. The provision shall advise the recipient that submission of a bid or offer or the submittal of an invoice or voucher for property, goods, or services furnished under a contract or agreement with the grantee shall constitute a certification by him that amounts to be paid do not exceed maximum allowable levels authorized by the Cost of Living Council regulations or standards. Violations shall be reported to the grantor agency and the local Internal Revenue Service field office.

k. Contracts and subgrants of amounts in excess of $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the grantor agency and the Regional Office of the Environmental Protection Agency.

SUPPLEMENT E

ENVIRONMENTAL IMPACT REVIEW REQUIREMENTS FOR ANNUAL STATE AND COMMUNITY HIGHWAY SAFETY WORK PROGRAMS (AWPS)

(NHTSA Order 560-2/FHWA Order 7550.1)

1. *Purpose:* The purpose of this directive is to implement Sections 102(2)(A) and 102(2)(B) of the National Environmental Policy Act of 1969 (Pub. L. 91-190; 42 U.S.C. 4332(2)(A) and (2)(C)), section 4(f) of the Department of Transportation Act of 1966 (Pub. L. 89-670; 49 U.S.C. 1653(f)), Guidelines of the Council on Environmental Quality (40 CFR part 1500), and DOT Draft Order 5610.1B (38 FR 30215, November 1, 1973) as they pertain to the State and Community Highway Safety Programs contained in State Annual Work Programs (AWPs).

2. *Background:* a. The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) have published Notices of Proposed Rule Making pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190; 42 U.S.C. 4332(2)(C)), Executive Order 11514 (35 FR 4247), and Guidelines of the Council on Environmental Quality (CEQ) (40 CFR part 1500). The FHWA Notice was published in 38 FR 30193 (November 1, 1973), and the NHTSA Notice was published in 38 FR 35018 (December 21, 1973). A copy of each Notice is attached and should be used with this Order pending their final issuance in 23 CFR part 771 (for FHWA) and 49 CFR part 520 (for NHTSA). These Notices and this Order taken together provide a process for determining the level of importance and environmental significance of major Federal actions proposed to be undertaken by the respective Administrations, and outline procedures for processing the necessary environmental impact or related statements.

b. DOT Draft Order 5610.1B has not been issued in its final form as of the date of the issuance of the joint Order.

3. *Effect on Other Directives:* This Order supersedes joint memorandum "Interim Guidelines for AWP Environmental Impact Reviews, FY '73" dated April 14, 1972, and the first paragraph of joint memorandum "Annual Work Program Approval" dated July 2, 1973.

4. *Policy.* It is the policy of FHWA and NHTSA that the Offices having joint AWP approval authority assess possible environmental impacts of the AWP before authorization is given to proceed with any tasks.

5. *Definitions:* All terms used in this Order are defined either in 23 CFR part 771 or 49 CFR part 520, and are used as defined in those parts.

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6. *Responsibility and Procedures:* a. Each Regional Administrator or his designee, in consultation with the Governor's Representative, shall review that portion of the AWP for which he is responsible to determine the environmental processing required for the proposed AWP tasks, in accordance with the guidelines and procedures established in 23 CFR part 771 or 49 CFR part 520, as appropriate.

(1) Authorization to proceed may be granted for all AWP tasks which are not major Federal actions significantly affecting the quality of the human environment. Such tasks require no further environmental processing.

(2) Authorization to proceed with tasks which are identified as major Federal actions which could significantly affect the quality of the human environment may be granted only to the extent necessary to gather information to determine whether a draft environmental impact statement (DEIS) or a negative declaration is appropriate.

(3) Authorization to proceed under paragraphs 6(a)(1) and 6(a)(2) must be granted jointly in accordance with Highway Safety Program Manual Volume 103, chapter III, paragraph 4.

b. Any DEIS or negative declaration as the case requires, will be prepared and processed for each major Federal action which could significanlty affect the quality of human environment by the responsible Regional Administrator or his designee in accordance with 23 CFR part 771 for FHWA Standards, or 49 CFR part 520 for NHTSA Standards.

c. Following the completion of a negative declaration or the processing of a final environmental impact statement, the responsible Regional Administrator or his designee may authorize the State to proceed.

The attachment to this Order was a reprint of proposed part 771 of title 23 CFR (38 FR 30193).

SUPPLEMENT F

DISTRIBUTION AND RELEASE OF AUDIT REPORTS ON STATE PROGRAM ADMINISTRATION

(NHTSA Order 291-1/FHWA Order 5-7)

1. *Purpose:* This Order transmits policy and establishes procedures for the distribution and release audit reports on State administration of Federal funds for highway safety purposes.

2. *Background:* The Office of Management and Budget (OMB) is seeking to improve Federal/State relationships by encouraging Federal agencies to expand their exchange of information with State and local governments. In this regard, State legislative auditors and internal audit organizations have indicated a specific interest in obtaining copies of Federal Government audit reports relative to State responsibilities for administering Federal Assistance programs. An increase in the frequency of State requests for Federal Government audit information of this type is anticipated.

3. *Policy:* a. It is NHTSA/FHWA policy to release audit reports and to assure dissemination of audit report information to the extent necessary for the development and improvement of State and Community Highway Safety Programs. Recognizing that the primary responsibility for State and Community Highway Safety Programs, funded in whole or in part by Federal Section 402 funds, rests with the Governor's Representative for highway safety, all audit reports will be fully coordinated with his office preliminary to any release of the audit report to other than the audited State agency.

b. DOT Order 2910.1A, dated August 13, 1971 (Subject: Distribution of Departmental Audit Reports of Audit Examinations of Federal Assistance Programs and Activities) establishes the following DOT policy:

Departmental audit reports concerning State and local government activities under DOT grant-in-aid programs shall be furnished to State and local government audit organizations and officials, as requested. Requested reports should be available for release whenever coordination of the contents with appropriate DOT program officials and grantee organizations has been completed. However, no audit report will be withheld from a requester for "coordination" or "staffing" reasons for more than 60 days after the report has been "issued" in final form.

If a requested audit report contains information deemed to be of a sensitive nature and the Administrator determines that its release would be detrimental to the objectives of this Order, such parts of a report may be withheld from a requester with the prior approval of the Secretary. Requests for approval to withhold parts of a requested report should be submitted to the Secretary through the Assistant Secretary for Administration, together with the appropriate justification.

4. *Definitions:* For purposes of this instruction, the following definition applies:

Audit Report is the final report issued by and for the Federal Government relating to the State operations audited. This definition does not include:

a. *Interim advisory memorandums* issued to keep Regional Offices and headquarters officials currently apprised of audit findings before issuance of the audit report.

b. *"Auditor's Statements"* or similar audit clearance documents prepared for specific voucher actions, or

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c. *Audit reports related to audits performed for other Federal agencies or State organizations.*

5. *Responsibilities:* a. *NHTSA* (1) NHTSA Regional Administrators are responsible for receiving and evaluating audit reports, insuring proper coordination, initiating corrective action, and releasing (or withholding on an exception basis with the prior approval of the Secretary) audit reports on State and Community Highway Safety Programs.

(2) The NHTSA Regional Administrator shall coordinate actions on audit reports with the responsible FHWA Regional Administrator, and shall obtain his concurrence on matters affecting the FHWA standards.

(3) The Director, Office of Management Systems, NHTSA is responsible for the effective coordination of management actions based on audit report findings and recommendations including headquarters' coordination of all requests for waiver to the Secretary.

b. *FHWA.* (1) FHWA Regional Administrators are responsible for establishing the FHWA position on those portions of audit reports affecting standard areas administered by the FHWA.

(2) The FHWA position, as established by the Regional Administrator, shall be transmitted to the counterpart NHTSA Regional Administrator within 30 days from the date of issuance of the final audit report which will provide data for use in the development of followup action with the audited agency.

6. *Implementation.* As the first step in implementation, NHTSA Regional Administrators shall discuss the audit release policy with each Governor's Representative to establish a common understanding on procedures for processing audit reports, including provisions for (a) advising State and local organizations of audit findings prior to their issuance in the audit report and (b) coordinating the reports prior to NHTSA's release to State agencies.

7. *Audit Close-out:* An audit close-out conference is held between the FHWA auditors and the audited State agency prior to issuance of a final audit report. Attendance by Regional Administrators or their staffs is encouraged so as to facilitate timely corrective action when necessary. This will also permit the audit report to reflect corrective action taken and in progress.

8. *Distribution of Audit Reports:* a. Audit reports covering the State and Community Highway Safety Program will be sent to the NHTSA Regional Administrator.

b. Only NHTSA Regional Administrators, with concurrence of the FHWA Regional Administrators, may authorize external release of audit reports on the State and Community Highway Safety Program.

c. If, in the opinion of responsible FHWA audit staff, there is information in the audit report that should not be released to the audited State organization and/or other State agencies, a statement setting forth their reasons for recommending withholding the information will be included in the memorandum transmitting the report to the NHTSA Regional Administrator.

d. Copies of audit reports will be further distributed within NHTSA and FHWA by the auditors in accordance with established distribution procedures.

e. In transmitting audit reports, the FHWA auditors will include the following statement of responsibility:

In accordance with NHTSA/FHWA policy, we are distributing copies of this report as noted below, with the understanding that it should not be released externally without the prior approval of the NHTSA Regional Administrator.

9. *Release:* The following instructions pertain to the actions of the NHTSA Regional Administrators relative to the release of audit reports. These instructions primarily concern release to the audited State agency, and State and local audit agencies as covered by DOT policy. Requests from other Government sources should be evaluated by the NHTSA Regional Administrators in accordance with that policy.

a. *Audited State Agency*—All audit reports will be fully coordinated with the audited State organization before their release to a State audit agency. In addition, in accordance with paragraph 5.a.(2) of this Order, the report will be coordinated with the FHWA Regional Administrator. The NHTSA Regional Administrator shall release the report to the audited State organization as soon as possible, which may be either before or after administrative disposition is taken. Alternatives in this regard are as follows:

(1) If the audit report contains no sensitive information, it may be released immediately to the audited State organization, advising that the report is being reviewed for administrative disposition. Reports of subsequent actions taken should be transmitted to the audited organization as they occur.

(2) If administrative disposition can be accomplished within ten (10) workdays from receipt of the report, such action should be taken and reported to the audited organization in the memorandum transmitting the report.

b. *Audit Agencies*—On request, the NHTSA Regional Administrator shall release audit reports to a State or local audit agency in accordance with the following guidelines:

(1) The NHTSA Regional Administrator shall assure that the audit report has been fully coordinated with the audited State organization and the FHWA Regional Administrator prior to its release.

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(2) Audit reports which are furnished to authorized officials of State and local audit agencies shall not be subject to NHTSA/FHWA restrictions as to use. However, the transmittal letter accompanying the report should indicate that the report is submitted for official use of the requesting authorized State official.

(3) The audit report release package shall include the audit report and NHTSA/FHWA position or disposition statements as appropriate. On matters involving the FHWA, the coordinated position statement shall be released with the report. On matters involving only the NHTSA, a position statement is optional. It is expected, however, that the NHTSA Regional Administrator will provide the requesting agency with any information which would show action taken by the State to correct conditions disclosed in the audit report.

(4) In no case may the requested release of an audit report be delayed for more than 60 days from the date the report was issued in final form except where a waiver from release has been requested from the Secretary of Transportation.

(5) If the NHTSA Regional Administrator believes a waiver from release may be warranted, a waiver should be requested immediately, to permit adequate time for headquarters review. Release of the report may be delayed beyond 60 days in those cases where a request for waiver is still awaiting DOT resolution.

(6) Documentation of the release (transmitting memorandum and appropriate background information) must be retained for official file purposes in the NHTSA Regional Office. A copy should also be sent to the FHWA Regional Administrator.

10. *Withholding Requested Audit Reports:* a. If a requested audit report contains information of a sensitive nature, the NHTSA Regional Administrator may initiate a request for waiver from release of the audit report or parts thereof. *A report may only be withheld with the prior approval of the Secretary of Transportation.*

b. The request for waiver should be prepared by the NHTSA Regional Administrator, coordinated with the FHWA Regional Administrator, as required, and submitted to the NHTSA Administrator thru the Associate Administrator for Administration. Specific content requirements follow:

(1) The request for waiver should be transmitted as a draft memorandum addressed to the Secretary, through the Assistant Secretary for Administration, for the signature of the NHTSA Administrator. The draft memorandum should contain the following:

(a) A concise statement of the reasons for the request for a waiver;

(b) A brief statement on the history of prior requests for audit reports by the State audit agency and the disposition of such requests, if any;

(c) Comments on the expected consequence of either releasing or withholding the report; and

(d) Any additional information which would provide a basis for the Secretary's decision on withholding the report.

(2) The request for waiver should be transmitted by memorandum to the Associate Administrator for Administration. The memorandum transmitting the request need not repeat information contained in the draft memorandum to the Secretary, but may include additional information relating to the requested waiver and/or amplifying on the proposed memorandum. A copy of the requested audit report should accompany the memorandum to NHTSA headquarters.

(3) The entire package should be coordinated with the FHWA Regional Administrator as applicable prior to its transmittal to NHTSA, Washington (see Paragraph 5.a.(2) above). In addition, two copies of the package must be transmitted to the FHWA Regional Administrator concurrent with its transmittal to NHTSA headquarters.

c. The Associate Administrator for Administration will review the request and take appropriate action based upon the recommendations of the Director, Office of Management Systems. All requests for waiver shall be coordinated with appropriate FHWA headquarters elements. The appropriate Regional Administrator will be kept informed of the status of the request and shall be provided with copies of all pertinent documents.

SUPPLEMENT G

DISPOSITION OF EXTERNAL AUDIT FINDINGS RELATED TO STATE AND COMMUNITY HIGHWAY SAFETY PROGRAM MANAGEMENT

(NHTSA Order 293-1/FHWA Order 5-8)

1. *Purpose:* This Order prescribes policy and procedures for (1) coordinating external audit reports on State Program Management, (2) timely and systematic followup on audit report findings and recommendations, and (3) periodic reporting to headquarters on status and action taken pursuant to external audit findings.

2. *Scope:* This Order applies to external audit reports on State and Community Highway Safety Program Management.

3. *References:* a. DOT Order 2920.1 dated November 17, 1971 (Subject: Audit Service in the Department of Transportation).

b. Joint NHTSA/FHWA Order 291-1/5-7 dated May 2, 1972 (Distribution and Release of Audit Reports on State Program Administration).

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c. OMB Circular A-73 dated August 4, 1965 (Subject: Audit of Federal Grants-in-Aid to State and Local Governments).

4. *Background:* OMB Circular A-73 states that Federal agencies are responsible for providing adequate audit coverage of grant programs, as a constructive aid in determining whether Federal funds have been applied effectively and in a manner consistent with related Federal laws, program objectives, and underlying agreements. The Circular provides that "* * * audit policies of Federal agencies will provide for relying, to the maximum extent feasible, on internal or independent audits performed at the State and local level * * *." In implementing the requirements of this Circular, a system must be developed to assure that State audits are effective, and that timely follow-up is provided on all deficiencies cited in audit reports. The procedures and requirements of this Order constitute a basic part of that system.

5. *Policy:* It is the policy of the NHTSA and FHWA that all external audit report findings and recommendations be resolved in a timely manner, and that management actions be fully documented based upon the coordinated input of all interested parties.

6. *Responsibilities:* Primary responsibility for followup to external audit reports on State and Community Highway Safety program management rests with the NHTSA and FHWA Regional Administrators. However, the resolution of audit findings may require input from numerous elements both at the regional and headquarters level.

a. *NHTSA Regional Administrators.* (1) Assure full coordination of all external audit reports with the appropriate Governor's Representative in order to develop and implement appropriate management actions based upon audit findings.

(2) Coordinate actions on audit findings with the responsible FHWA Regional Administrator, and obtain his concurrence on matters affecting the FHWA standards.

(3) Provide a formal system for documenting all actions taken as a result of audit findings and have such documentation available for review by authorized Federal officials; e.g., DOT, GAO.

(4) Advise the Director, Office of Management Systems, N48-40, NHTSA, on the status of actions taken with respect to each audit finding or recommendation. Such reports shall be submitted within 15 days of the end of the quarter in which the final audit report is received. Form HS-247, Audit and Administrative Review Finding Status Record, which is discussed in paragraph 7 of this Order, shall be used for these reports.

b. *FHWA Regional Administrators.* (1) FHWA Regional Administrators are responsible for establishing the FHWA position on those portions of audit reports affecting standard areas administered by the FHWA, assuring that appropriate action is taken, and maintaining appropriate files.

(2) The FHWA position, as established by the Regional Administrator, shall be transmitted to the counterpart NHTSA Regional Administrator within 30 days from the date of issuance of the final audit report.

c. *NHTSA Headquarter's Officials.* (1) The Director, Office of Management Systems, serves as the central coordination point for NHTSA headquarters action on audit matters, and is directly responsible for assuring timely management action based on audit report findings and recommendations. In carrying out this responsibility the Director, Office of Management Systems, NHTSA shall:

(a) Maintain central files of all audit reports to include a record of the status or disposition of all findings.

(b) Assure appropriate headquarter's action with respect to audit findings.

(c) Review and coordinate requests by NHTSA Regional Administrators for advice and/or assistance on audit findings and related audit matters.

(2) Associate Administrators, Staff Office Directors, and other headquarters officials are responsible for providing timely advice or other assistance to the Director, Office of Management Systems, on matters falling within their respective areas of responsibility. Such input shall serve as the primary basis for coordinated headquarters responses prepared by the Office of Management Systems.

d. *FHWA Headquarter's Officials.* FHWA Headquarter's officials are responsible for providing advice and assistance as requested by the Regional Federal Highway Administrator, who has been delegated authority to take necessary action for FHWA pertaining to disposition of audit findings. No central file of the disposition of findings will be maintained by FHWA Headquarters, since both Administrations have access to files maintained by NHTSA's Office of Management Systems.

7. *Documentation and Reporting.* a. All management actions taken pursuant to State and Community Highway Safety program audit report findings and recommendations, will be documented. Form HS-247, Audit and Administrative Review Finding Status Record,[1] will serve as the basic

[1] Form HS-247 was attached to the NHTSA/FHWA Order but, pursuant to 1 CFR 18.11, it is not republished. The form is available for inspection and copying at those locations specified in 49 CFR part 7, appendices D and H.

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medium for recording the status of actions and for reporting to headquarters. As a minimum, this form will be completed for each audit report. Each Regional Administrator is responsible for determining whether in-depth documentation is required and whether or not to establish additional files for this purpose.

b. Form HS-247, Audit and Administrative Review Finding Status Record, will accompany, as an attachment, all quarterly reports required under NHTSA Order 460-1 dated November 2, 1970, (Subject: State Systems of Administrative and Financial Procedures).

For those audit reports in which no adverse findings are cited, a single negative report shall be submitted on Form HS-247, Audit and Administrative Review Finding Status Record, together with the quarterly report for the period during which the final report was issued. No subsequent reporting on that audit is necessary.

c. An information copy of each Form HS-247, Audit and Administrative Review Finding Status Record, will be provided to the cognizant FHWA Regional Administrator.

SUPPLEMENT H

GUIDELINES FOR THE DESIGNATION OF A STATE AGENCY RESPONSIBLE FOR HIGHWAY SAFETY

(NHTSA Order 900-4/FHWA Order 7-5)

1. *Purpose:* This order establishes guidelines relative to the responsibilities and authorities and the organization structure and placement of the State agency responsible for managing the State highway safety program in accordance with the Highway Safety Act of 1970 (Pub. L. 91-605).

2. *General:* Effective planning and administration of a State's highway safety program are needed to initiate, coordinate, and evaluate a State's comprehensive effort in highway safety. While the demands imposed by climate, geography, population, etc., vary, and the resources needed are subject to competition to meet other problems, it is imperative that an effective, State-wide comprehensive highway safety plan exists in coordinated fashion.

The State must assure that its plan is comprehensive and encompasses all political subdivisions; is coordinated to include all aspects of highway safety; and is efficient and effective in using the human, financial and technological resources available to plan and administer the highway Safety efforts in the State.

Highway safety's high priority and wide impact on State and local agencies caused Congress to designate the Governor of the State as responsible for the administration of the program. The Highway Safety Act of 1970 further requires the designation of a suitably equipped and responsible State agency to carry out the Governor's program. Under his authority and prestige, the designated State agency will draw together highway safety activities in a well-structured, concerted effort that satisfies State objectives and assures a long-term, stable and thoroughly professional program.

3. *Background and authority:* a. House Report No. 1700, 89th Congress, 2nd Session, July 15, 1966, pages 2-3, state:

"* * * The important consideration is the fact that coordinated State action programs have generally been missing * * *"

"* * * highway safety programs within each State and among the several States will be coordinated and comprehensive."

"* * * It is the intention * * * to recognize the differing governmental and practical problems existing in the several States but to lead all of the States to take affirmative action with respect to all of the various aspects of the highway safety problem."

b. House Report No. 1700, 89th Congress, 2nd Session, July 15, 1966, page 21, states:

"* * * In most States a wide variety of officials and State agencies now are responsible for various aspects of highway safety activity. The committee considers it essential to administrative workability and the success of the program that there be one central authority responsible to the Secretary for the State's safety program. Accordingly, the bill as reported requires that the Governor of the State be the responsible official. It places no restriction, of course, upon his power to delegate his functions in any way he wishes for administration purposes, provided he remains the State official responsible to the Federal Government for conduct of the State's program."

c. Section 203 of the Highway Safety Act of 1970 amends section 402(b)(1)(A) of title 23, United States Code, by requiring that the Governor of the State shall be responsible for the administration of the State highway safety program "through a State agency which shall have adequate powers and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program." This amendment takes effect December 31, 1971.

d. Volume O, Planning and Administration, dated January 1969, NHTSA Highway Safety Program Manual. This volume further discusses the need for the Governor to be responsible for the highway safety program and provides guidance on program development, operation, and evaluation.

4. *Responsible State Agency:* To meet the State agency requirements of the Highway Safety Act of 1970, the Governor should designate an agency to administer the State's highway safety program. This re-

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quirement can be met whether the agency is established by legislative enactment, executive order, or a combination of the two. It is not inconsistent with gubernatorial creation or designation for the State's legislature to prescribe the size, composition, or other characteristics of the agency provided the Governor's responsibility and jurisdiction over it are clear. The following standards for eligibility will be applicable to the State agency:

a. *Responsibilities and Authorities.* The designated State agency (the head of which should be designated as the Governor's Highway Safety Representative) must have the authority and responsibility to:

Prepare, develop and revise comprehensive plans based on an evaluation of highway safety problems within the State;

Define, develop, and correlate annual work programs under such comprehensive plans;

Establish priorities for highway safety improvement in the State;

Provide information to prospective aid recipients on the benefits of the program and procedures for participation;

Encourage local units of government to improve their highway safety planning and administration efforts;

Evaluate the implementation of State and local highway safety plans and programs;

Monitor progress and audit expenditures of Federal highway safety funds by State and local agencies;

Coordinate the State's highway safety program plan with other Federally and non-Federally supported programs relating to or having impact on highway safety;

Collect statistics and other data relevant to highway safety in the State as required by the National Highway Traffic Safety Administration and/or the Federal Highway Administration;

Assure that at least 40 percent of all Federal funds apportioned under this program for any fiscal year are used by local governments or combinations of units of local governments;

Make final decisions for the State and enter into contracts and agreements on behalf of the State for Federally funded highway safety projects;

Represent the State in all other matters coming under the purview of the Highway Safety Act.

b. *Organizational Structure.* A State agency responsible for coordinating the Governor's Highway Safety Program may be created or designated as (1) a separate unit of State government or (2) an office or component of an existing agency of State government. Details of organization and structure are matters of individual State discretion.

The attached organization charts illustrate examples of alternative State agency structures which would be considered as suitably organized in accordance with Section 402(b)(1)(A), title 23, United States Code, as amended. Among the alternatives illustrated, the following are listed by order of preference:

A separate staff office of highway safety directed by the Governor's representative and reporting directly to the Governor. (Chart 1)

A separate State agency for highway safety, equal and on line with other State agencies or departments such as highways, State police, health, education, motor vehicles, etc. (Chart 2)

An office of highway safety within an existing agency such as the State Department of Transportation, the Department of Public Safety, the Department of Highways, or the Department of Motor Vehicles. The office director reports to the agency head, who is designated as the Governor's representative.

Adaptions and modifications are permissible to give the Governor maximum flexibility in administering the State's highway safety program. However, the designated State agency must:

Be a definable agency in the executive branch of State government charged with and empowered to carry out the responsibilities established by the Highway Safety Act.

Have a full-time director who has responsibility and authority for (1) reviewing, approving, and maintaining general oversight of the State program and its implementation and (2) activities listed in 4.a. above.

While responsibilities for State program development, coordination, and evaluation must ultimately reside in one State agency subject to the jurisdiction of the Governor, this does not overlook important operational roles of program development and implementation by other State agencies nor by local units of government.

c. *Staff and Capabilities.* The NHTSA and the FHWA must be assured that the designated State agency can properly perform the assigned functions. To this end, the following minimum standards are established for the designated State agency staff:

A full-time director;

A staff of adequate size (e.g., no less than three full-time professionals) and competencies (e.g., program planning, data analysis and evaluation, financial operations, program coordination, public information, etc.) to accomplish required program planning, coordination, and evaluation with each of the major State operational agencies and with local governmental jurisdictions and agencies;

The inclusion of the State agency's highway safety staff within the State's existing personnel merit system.

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The above merit system requirement is not meant to preclude exemptions, if appropriate under State law. At the option of the State, the following positions may be exempted:

Governor's highway safety representative;

Director of the office of highway safety;

Members of state advisory boards, councils, or commissions.

SUPPLEMENT I

USE OF SECTION 402 FUNDS FOR TRAINING

(NHTSA Order 462-10/FHWA Order 7-8)

1. *Purpose:* This Order establishes: a. Policy on the eligibility of highway safety training activities funded under section 402 of title 23 U.S.C.

b. Procedures for the submission of supplemental information in support of training tasks included in a State's Annual Work Program.

2. *Effect on Other Directives:* NHTSA Order 462-10, dated July 31, 1969, (Subject: Procedures for Coordination of 402 Education and Training Grant Applications), is hereby cancelled.

This Order expands on volume 103 of the Highway Safety Program Manual, and provides that certain AWP supporting information that is normally retained by the Governor's Representative, be transmitted to the appropriate Federal approving agency.

3. *Responsibilities:* NHTSA and FHWA Regional Administrators are responsible for assuring that the policies and procedures established by this Order are adhered to within their parts of the State's program.

4. *Policy on Funding Eligibility:* Section 402(g) of title 23 U.S.C. precludes the use of 402 funds for any purposes for which Section 403 funds are authorized. To avoid overlap in funding training activities under these sections, it has been determined that Section 403 funds may be used to establish new training programs and to improve or expand established programs. Usually such activities are administered on a national or regional basis to overcome general long term deficiencies, as opposed to meeting the short term needs of State and local jurisdictions in carrying out their safety programs. Section 403 funds may, for example, be used to fund national fellowship programs in highway safety and may involve training periods of nine months or longer.

Section 402 training is for continuing "action" programs at the State and local levels.

Only those costs directly associated with a highway traffic safety program of instruction should be included as training costs and reported as provided by this Order. Such direct costs may include, for example, enrollment fees, tuition, training aids, travel expenses, and per diem. Other costs, such as salary, may also be eligible for funding under Section 402, but should not be reported as training expenses.

Training projects may be eligible for Section 402 funding when all of the following conditions are satisfied:

a. The personnel being trained are identified with a State's planned or operational program to implement a portion of its approved highway safety program and are committed to work in an identified highway safety program area upon completion of the training. It is expected that personnel completing training of six months or more will be required to serve not less than one year in an identified highway safety program area upon completion of the training.

b. Training is a necessary incident to and in support of a planned or operational State or local highway safety program.

c. Training activities are less than nine months in duration as, for example, short courses and in-service training.

d. All training equipment, materials, and facilities acquired or improved with 402 funds will be continuously used in the State or local highway traffic safety program. Costs for enrollment fees, tuition, and other charges will be comparable to costs paid by the agency for other similar training services.

GUIDELINES FOR SUBMITTING TRAINING PROPOSALS

Supplement plans which include training should include a complete description of the nature, scope, and objectives of the proposed training program; a complete description of the total program objectives; a statement of the objectives of each course; and a statement of the objectives of each major unit within the proposed course. The application should clearly state how these objectives are to be accomplished. Organizations proposing a project that includes training, should include in their application, as a minimum, the following information (HS Form 193, Attachment II is provided for this purpose):

Purpose. Present a brief statement of the purpose and specific objectives of the training program. The statement should include the need for the training, how the course or program component contributes to the objectives, how the course relates to State and local highway safety programs, and how the course or training program relates to other current State and local training programs.

Course Content. Present an outline of the course content in sufficient detail to permit an assessment of its nature and scope. As a minimum, this outline should include a list of the subjects to be taught, the amount of time allocated to each subject, and the objectives (knowledge, skills, etc.) to be met by

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each subject or unit presentation within the course. Other information such as the source material upon which the course is based, and the textbooks and collateral references to be used should also be provided.

Course Schedule. Present information on the length of the course, including the number of days and hours per day. If the course is part of a sequence of other courses, its position in the sequence should be identified. The title, description, and time allocation of each major unit within the course should be identified. The number of times the course is to be presented during the academic or fiscal year should also be indicated.

Participants (Students). The number of students scheduled to attend each course and the total number of students to be trained with the funds required for the training program should be indicated. Also include the prerequisites for course attendance (e.g., job position, age limits, educational accomplishments, etc.) and other pertinent data.

Costs. The cost of each course as well as the cost of the total training program of which the course is a part should be identified. Course costs should be itemized to identify specifically the direct and indirect costs of instruction, including, but not limited to, such items as instructors, facilities, equipment, visual aids, textbooks, handout materials, support services, student expenses, and institutional overhead. In addition to the itemized and total costs, the per pupil cost of instruction will be identified for each course, based on the number of students satisfactorily completing the course.

Instructors. Include the name, field of specialization, and academic credentials (e.g., degrees, teaching experience, etc.) of each instructor who will participate in either the curriculum development process or the actual teaching of each course or portion of a course.

Special Facilities and Equipment. Describe the specialized course facilities and equipment, such as simulators, laboratory equipment, housing, technical aids, special laboratories, multi-car driving ranges, etc., which are to be used in the training program.

Sponsoring Agency or Institution. Identify the agency or institution sponsoring and/or presenting the training program.

5. *Scope and Content of Training Programs:* a. Section 402 training activities must expand or upgrade the capability of an existing staff to perform highway related safety functions as distinguished from general skills and knowledge. A highway safety training program in which a majority of the content consists of safety-related subjects, but a portion of the class time is devoted to these or other general subjects, will be generally funded on a pro-rata basis according to the content containing traffic or highway safety subject matter.

b. Developing course content as part of a safety training project for individual State and local agencies may be included only where it can be shown that such development is a unique requirement of a specific action program. Course and curriculum development must not duplicate materials already developed for similar purposes by either the FHWA, the NHTSA, or by other States. This does not preclude the funding of projects intended to adapt these curricula and training materials to meet particular State and local instructional needs. The NHTSA and FHWA Washington Offices will maintain files of safety training curriculums and training programs which will be made available upon request.

6. *Procedures for Submitting Supplemental Training Information:* a. Training is a unique requirement of State and local safety programs. It embraces a multitude of program areas and accounts for a substantial portion of federally funded safety activities. Accordingly, this Order sets forth guidelines for the use of the approving offices in evaluating proposals for training. It also requires that information on completed training be submitted to the approving offices. The information is the basis for regional and national analyses pertaining to types and costs of safety training.

b. All training or training program development tasks included in Annual Work Programs must be supported by sufficient descriptive information to enable the approving offices to perform both quantitative and qualitative evaluations. The evaluative information contained in Attachment I, "Guidelines for Submitting Training Proposals" reflects the information which should accompany each proposed training task. This information should be provided for each subelement training task on the form contained in Attachment II, "Training Activities Information."

c. Evaluation of proposed training activities by the States, and NHTSA and FHWA Regional Offices should be based on the jurisdiction's needs, the objectives of the training, and the likelihood that the training will accomplish the intended objectives. Unique proposals and those generating questions of eligibility may be referred to the Washington office for evaluation.

d. Only those costs directly associated with a highway traffic safety program of instruction should be reported as training costs on HS Form 193 and HS Form 194. While other costs such as salary of the trainee are fundable under Section 402 as non-training expenses, they should not be included as training expense items on these forms.

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e. At the completion of all training tasks, the form contained in Attachment III, "Section 402 Record of Completed Training" will be completed by the Governor's Representative and submitted to the FHWA and NHTSA as appropriate for use in assessing manpower development and training progress. Three copies of each form relating to all standards will be submitted to the NHTSA Regional Administrator who will review each form for completeness and transmit two copies to the Chief, Manpower Development Division, N42-22, Office of State and Community Comprehensive Programs, TSP. In addition, three copies of each form relating to the FHWA administered standards will be submitted to the FHWA Division Engineer, who will forward one copy to the FHWA Regional Administrator and one copy to the Director, OHS, FHWA.

f. On depletion of initial stock, copies of HS Form 193, "Training Activities Information," and of HS Form 194, "Section 402 Record of Completed Training," may be obtained from NHTSA, General Services Division, N48-51, Room 5111, NASSIF Building, 400 7th Street SW., Washington, DC 20590.

[33 FR 16337, Nov. 7, 1968. Redesignated at 38 FR 10811, May 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1204.4, see the List of CFR Section Affected in the Finding Aids section of this volume.

PART 1205—HIGHWAY SAFETY PROGRAMS; DETERMINATIONS OF EFFECTIVENESS

Sec.

1205.1 Scope.
1205.2 Purpose.
1205.3 Identification of National Priority Program Areas.
1205.4 Funding procedures for National Priority Program Areas.
1205.5 Funding procedures for other program areas.

AUTHORITY: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

SOURCE: 47 FR 15120, Apr. 8, 1982, unless otherwise noted.

§ 1205.1 Scope.

This part identifies those highway safety programs that are eligible for Federal funding under the State and Community Highway Safety Grant Program (23 U.S.C. 402) and specifies the Federal funding requirements for those programs.

§ 1205.2 Purpose.

The purpose of this part is to establish national highway safety priorities and establish program areas within which highway safety programs developed by the states would be eligible to receive Federal funding.

§ 1205.3 Identification of National Priority Program Areas.

(a) Under statutory provisions administered by NHTSA, the following NHTSA-administered highway safety program areas have been identified as encompassing a major highway safety problem which is of national concern, and for which effective countermeasures have been identified. Programs developed in such areas are eligible for Federal funding, pursuant to guidelines issued by the National Highway Traffic Safety Administration and the review procedure set forth in § 1205.4:

(1) Alcohol and Other Drug Countermeasures
(2) Police Traffic Services
(3) Occupant Protection
(4) Traffic Records
(5) Emergency Medical Services
(6) Motorcycle Safety

(b) Under statutory provisions administered by FHWA, the following FHWA-administered highway safety program area has been identified as encompassing a major highway safety problem which is of national concern, and for which effective countermeasures have been identified. The program developed in this area is eligible for Federal funding, pursuant to provisions of 23 U.S.C. 402(g), guidelines issued by the Federal Highway Administration and the review procedures set forth in § 1205.4: *Roadway Safety.*

[47 FR 15120, Apr. 8, 1982, as amended at 53 FR 11270, Apr. 6, 1988]

§ 1205.4 Funding procedures for National Priority Program Areas.

If a State intends to use funds under 23 U.S.C. 402 to support a program that is within a National Highway Safety Priority Program Area, it shall submit as part of its annual Highway Safety Plan a three to five page overview of all highway safety problems identified in the State. The following procedure shall then apply:

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(a) The State shall describe each highway safety problem within such Priority Areas, any countermeasure proposed to decrease or stabilize the problem, and the kinds of data relied upon in the making of such problem and countermeasure identifications.

(b) The State shall list the specific projects proposed to implement such countermeasures and the criteria for project selection.

(c) The State shall conduct an evaluation of its programs of the prior year, and shall describe the evaluation in the annual Highway Safety Plan.

(d) NHTSA and/or FHWA, as applicable, shall review the State's Highway Safety Plan, to determine whether each proposed program addresses the identified problems.

(e) If the State meets the criteria of paragraphs (a) through (d), of this section, NHTSA or FHWA, as applicable, shall approve the program as part of the Highway Safety Plan.

§ 1205.5 Funding procedures for other program areas.

If a State intends to use funds under 23 U.S.C. 402 to support a project that is not within a National Highway Safety Priority Program Area, the State shall describe the project in its annual Highway Safety Plan, and shall, at its option, select one or both of the following procedures:

(a) *Formal decisionmaking.* Under this procedure, the State shall first develop and submit as part of its annual Highway Safety Plan or by a separate submission a formal administrative decisionmaking process for identifying highway safety problems and corresponding countermeasures. Upon approval of the Plan and adoption by the State of the process involved, a State may thereafter certify in subsequent Plan submissions that it has developed each proposed project in accordance with the described process. NHTSA or FHWA shall on such subsequent submissions consider the findings and determinations made by the State pursuant to such process to be determinative and shall review proposed projects only pursuant to the limited review criteria applicable to the projects subject to § 1205.4. NHTSA and/or FHWA, as applicable, shall review and approve proposed State administrative processes pursuant to the following general criteria:

(1) Use of State data on traffic accidents to determine the magnitude and severity of the highway safety problems by geographic area and target group.

(2) Determination of related system deficiencies and driver behavior deficiencies that can be stabilized or remedied by countermeasure approaches.

(3) Development of countermeasures to remedy the problems. Priorities should be assigned based on the following considerations:

(i) Estimates of the impact on accidents and injuries;

(ii) Cost effectiveness;

(iii) Past program and project results;

(iv) Innovative approaches;

(v) Comprehensiveness of programs;

(vi) Catalytic and leverage effects; and

(vii) Prospects for activities to be self-supporting or continued with State/local resources after Federal funds are discontinued.

(4) Development of projects from the countermeasure approaches that ensure consultation with affected groups and participation by the public. This shall be accomplished by conducting public meetings to identify traffic safety problems and to recommend alternate countermeasure solutions.

(5) Development of administrative and impact evaluations for the projects, as appropriate.

(b) *Problem identification.* Under this procedure, the State shall submit information on individual proposed projects. NHTSA or FHWA, as applicable, shall approve each project if it addresses the identified problem in a manner reasonably calculated to decrease or stabilize the problems. The State shall submit, at a minimum, the following information:

(1) The State and local data on traffic accidents used to determine the magnitude and severity of the particular highway safety problem by geographic area and target group.

(2) The impact each project is estimated to have on traffic accidents and injuries.

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(3) Estimates of the resources necessary to carry out planned activities and projects.

(4) The relation of each project to a comprehensive, balanced program.

(5) The improvements in program operational efficiency and/or cost effectiveness which are expected as a result of the implementation of each project.

(6) The commitment of State and/or local resources to each project.

(7) The prospects for activities to be self-supporting or continued with State/local resources after Federal funds are discontinued.

(8) The criteria to be used to conduct administrative and impact evaluations of products, as appropriate.

PART 1206—RULES OF PROCEDURE FOR INVOKING SANCTIONS UNDER THE HIGHWAY SAFETY ACT OF 1966

Sec.

1206.1 Scope.
1206.2 Purpose.
1206.3 Definitions.
1206.4 Sanctions.
1206.5 Commencement of proceedings.
1206.6 Contents of notice of proposed recommended determination.
1206.7 Hearing officers.
1206.8 Prehearing conference.
1206.9 Consent determination.
1206.10 Hearing.
1206.11 Recommended determination.
1206.12 Final determination.

AUTHORITY: 23 U.S.C. 116, 315, 402.

SOURCE: 39 FR 19206, May 31, 1974, unless otherwise noted.

§ 1206.1 Scope.

This part establishes procedures governing determinations to invoke the sanctions applicable to any State that does not comply with the highway safety program requirements in the Highway Safety Act of 1966, as amended (23 U.S.C. 402), and highway safety program standards issued thereunder.

§ 1206.2 Purpose.

The purpose of this part is to prescribe procedures for determining whether and the extent to which the 23 U.S.C. 402 sanctions should be invoked, and to ensure a full airing of views on the issues relevant to such determinations by affording the affected State and all other interested persons an opportunity to participate in a public hearing.

§ 1206.3 Definitions.

As used in this part:

(a) *Administrators* means the Administrators of the Federal Highway Administration and the National Highway Traffic Safety Administration.

(b) *Affected State* means the State with respect to which a proposed recommended determination has been made pursuant to this part.

(c) *Highway safety program* means a State program consisting of both (1) a Comprehensive Highway Safety Plan, a multi-year plan of the State and its political subdivisions for implementing the highway safety program standards and (2) an Annual Highway Safety Work Program, a program detailing the activities and proposed expenditures of the State and its political subdivisions for implementing selected components of the State's Comprehensive Highway Safety Plan during a single year.

(d) *Highway safety program standards* means the standards in § 1204.4 of this chapter, issued under 23 U.S.C. 402, for State highway safety programs.

(e) *Implementing* includes, but is not limited to, complying with conditions upon which the Secretary has granted approval for a State's highway safety program.

(f) *Secretary* means the Secretary of Transportation.

§ 1206.4 Sanctions.

(a)(1) Except as provided in paragraph (a)(2) of this section, the Secretary withholds all of a State's Federal highway safety funds and 10 percent of its Federal-aid highway funds that would otherwise have been apportioned to the State under 23 U.S.C. 402 and 104, respectively, and withholds approval of further highway safety programs in the State, if he finally determines pursuant to this part that a State:

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(i) Does not have a highway safety program approved by him in accordance with 23 U.S.C. 402; or

(ii) Is not implementing such an approved program.

(2) The Secretary may suspend, for such periods as he deems necessary, the application to a State of the provision in 23 U.S.C. 402 regarding the withholding of funds apportioned under 23 U.S.C. 104, if he determines that such suspension is in the public interest.

(3) When the Secretary withholds funds and program approval from a State pursuant to paragraph (a)(1) of this section, he continues doing so until the State has an approved program or is implementing an approved program to his satisfaction, as appropriate.

(b)(1) The Governor of each State shall implement, or cause to be implemented, a highway safety program approved by the Secretary pursuant to 23 U.S.C. 402. If the Governor lacks legal authority to implement such program or part thereof, he shall enter into formal agreements for its implementation with appropriate officials of the appropriate State agency, political subdivision, or other governmental instrumentality. However, the existence of such agreement does not relieve the Governor of his responsibility for implementation of the entire highway safety program.

(2) If the Secretary finally determines pursuant to this part that a State has failed to comply with the Federal laws or regulations with respect to its highway safety program, or has failed to implement a highway safety program approved by him pursuant to 23 U.S.C. 402, he may withhold payment to the State on account of (i) the State's current annual highway safety work program, with respect to obligations incurred after the date of the Secretary's determination or a date established in such determination, whichever is later, and (ii) the State's subsequent annual highway safety work programs, and may also withhold approval of further highway safety programs of the State, until the State complies or takes remedial action to the satisfaction of the Secretary, as appropriate.

§ 1206.5 Commencement of proceedings.

(a) The Administrators initiate the proceedings pursuant to this part by making a proposed recommended determination to invoke the sanctions specified in § 1206.4

(b) The Administrators send the Governor of the affected State by certified mail and publish in the FEDERAL REGISTER a notice of the proposed recommended determination.

§ 1206.6 Contents of notice of proposed recommended determination.

The notice of proposed recommended determination includes:

(a) A statement of the reasons for the proposed action, including the specific highway safety program deficiencies upon which the proposed recommended determination is based; and

(b) The time, date, and place for a hearing at which the affected State and any interested person may present evidence and oral and written views, or both, concerning the specified deficiencies. Hearings are held in Washington, DC, at the headquarters of the Department of Transportation.

§ 1206.7 Hearing officers.

(a) A three-member hearing board is established consisting of an Office of the Secretary official appointed by the Secretary, a Federal Highway Administration official appointed by the Administrator of that Administration, and a National Highway Traffic Safety Administration official appointed by the Administrator of that Administration. The official from the Office of the Secretary serves as presiding officer. The appointment of the hearing board is announced in a notice published in the FEDERAL REGISTER by the presiding officer. A copy of the notice is sent to the Governor of the affected State by certified mail.

(b) The presiding officer has power to take any action and to make all necessary rules and regulations to govern the conduct of the hearing. His powers include the following:

(1) Changing the date and time of the hearing upon reasonable notice to the affected State and other hearing participants and publication of such change in the FEDERAL REGISTER;

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(2) Continuing the hearing in whole or in part;

(3) Regulating the course of the hearing and the conduct of the participants and counsel therein;

(4) Examining witnesses; and

(5) Taking any other action authorized by this part.

§ 1206.8 Prehearing conference.

(a) At any time before the hearing begins, the presiding officer, on his own initiative or at the written request of the Governor of the affected State, may, after publication of a notice in the FEDERAL REGISTER giving notice to interested persons, convene a public prehearing conference to consider the following:

(1) Simplification and clarification of the issues;

(2) Stipulations as to the facts, and contents and authenticity of documents;

(3) Disclosure of the names and addresses of witnesses and provision of documents intended to be offered in evidence; or

(4) Any other matter that will tend to simplify the issues or expedite the proceedings.

§ 1206.9 Consent determination.

At any time prior to the commencement of the hearing, the affected State and the Administrators may execute an appropriate agreement for disposing of the matter, on which the proposed recommended determination is based, by mutual consent for the consideration of the Secretary. The agreement is submitted to the Secretary, who may:

(a) Accept it and publish a notice in the FEDERAL REGISTER setting forth its terms;

(b) Reject it and direct that the proceedings in the matter continue; or

(c) Take such other action as he deems appropriate.

§ 1206.10 Hearing.

(a) Hearings held pursuant to this part are informal, legislative-type hearings and are open to the public.

(b) The affected State and any interested person participating in a hearing conducted pursuant to this part may, except as specified by the presiding officer pursuant to § 1206.7(b):

(1) Appear by counsel or other authorized representative;

(2) Present evidence orally or by documents; and

(3) Present oral or written argument.

(c) The hearing is stenographically transcribed verbatim and reported by an official reporter designated by the presiding officer.

(d) As soon as practicable after the presiding officer receives the official transcript of the hearing, exhibits, and other documents filed at the hearing, he forwards them to the Administrators.

§ 1206.11 Recommended determination.

As soon as practicable, the Administrators review the materials forwarded to them by the presiding officer, any prehearing conference notices, and the evidence of the Administrations regarding the affected State's program deficiencies cited in the proposed recommended determination. On the basis of the review, they issue a recommended determination and submit it and the material they reviewed to the Secretary.

§ 1206.12 Final determination.

(a) As soon as practicable, the Secretary reviews the recommended determination and the material forwarded him by the Administrators. On the basis of the review, the Secretary may adopt or reject the recommended determination, in whole or in part. The Secretary then issues a final determination which includes:

(1) His decision, and reasons therefor, on the question of whether and to what extent the sanctions provided in § 1206.4 will be invoked; and

(2) A specification of the funds and program approval, if any, to be withheld.

(b) A copy of the final determination is sent by certified mail to the Governor of the affected State and to each other hearing participant, and is published in the FEDERAL REGISTER.

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PART 1208—NATIONAL MINIMUM DRINKING AGE

Sec.

1208.1 Scope.
1208.2 Purpose.
1208.3 Definitions.
1208.4 Adoption of National Minimum Drinking Age.
1208.5 Period of availability of withheld funds.
1208.6 Apportionment of withheld funds after compliance.
1208.7 Period of availability of subsequently apportioned funds.
1208.8 Effect of noncompliance.
1208.9 Procedures affecting States in noncompliance.

AUTHORITY: 23 U.S.C. 158; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 51 FR 10380, Mar. 26, 1986, unless otherwise noted.

§ 1208.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 158, which establishes the National Minimum Drinking Age.

§ 1208.2 Purpose.

The purpose of this part is to clarify the provisions which a State must have incorporated into its laws in order to prevent the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age.

§ 1208.3 Definitions.

As used in this part:

Alcoholic beverage means beer, distilled spirits and wine containing one-half of one percent or more of alcohol by volume. Beer includes, but is not limited to, ale, lager, porter, stout, sake, and other similar fermented beverages brewed or produced from malt, wholly or in part or from any substitute therefor. Distilled spirits include alcohol, ethanol or spirits or wine in any form, including all dilutions and mixtures thereof from whatever process produced.

Public possession means the possession of any alcoholic beverage for any reason, including consumption on any street or highway or in any public place or in any place open to the public (including a club which is *de facto* open to the public). The term does not apply to the possession of alcohol for an established religious purpose; when accompanied by a parent, spouse or legal guardian age 21 or older; for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital or medical institution; in private clubs or establishments; or to the sale, handling, transport, or service in dispensing of any alcoholic beverage pursuant to lawful employment of a person under the age of twenty-one years by a duly licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

Purchase means to acquire by the payment of money or other consideration.

§ 1208.4 Adoption of National Minimum Drinking Age.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 U.S.C. on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 U.S.C. on the first day of each fiscal year after the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(c) A State that has in effect a law which permits the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age, but 18 years or older on the day preceding the effective date of the State law and at that time could lawfully purchase or publicly possess any alcoholic beverage in the State, will be deemed to be in compliance with paragraphs (a) and (b) of

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this section in each fiscal year in which the law is in effect, provided:

(1) The law must be in effect before the later of (i) October 1, 1986 or (ii) the tenth day following the last day of the first session the legislature of the State convenes after April 7, 1986; and

(2) The State law otherwise makes unlawful the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age.

[51 FR 10380, Mar. 26, 1986, as amended at 53 FR 31321, Aug. 18, 1988]

§ 1208.5 Period of availability of withheld funds.

(a) Funds withheld under § 1208.4 from apportionment to any State on or before September 30, 1988 will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), 104(b)(2) or 104(b)(6) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1208.4 from apportionment to any State after September 30, 1988 will not be available for apportionment to the State.

[53 FR 31322, Aug. 18, 1988]

§ 1208.6 Apportionment of withheld funds after compliance.

Funds withheld under § 1208.4 from apportionment, which remain available for apportionment under § 1208.5(a), will be apportioned to any State that makes effective a law prohibiting the purchase or public possession in the State of any alcoholic beverage by a person who is less than 21 years of age before the last day of the period of availability as defined in § 1208.5(a). The funds will be apportioned to the State on the day following the effective date of the law.

[53 FR 31322, Aug. 18, 1988]

§ 1208.7 Period of availability of subsequently apportioned funds.

(a) Funds apportioned pursuant to § 1208.6 will remain available for expenditure as follows:

(1) Funds apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1208.6 and not obligated at the end of the periods defined in § 1208.7(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

[53 FR 31322, Aug. 18, 1988]

§ 1208.8 Effect of noncompliance.

If a State has not made effective a law prohibiting the purchase and public possession in the State of any alcoholic beverage by a person who is less than 21 years of age at the end of the period for which funds withheld under § 1208.4 from apportionment are available for apportionment to a State under § 1208.5, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

[53 FR 31322, Aug. 18, 1988]

§ 1208.9 Procedures affecting States in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age,

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based on NHTSA's and FHWA's preliminary review of its statutes for compliance or non-compliance, will be advised of the funds expected to be withheld under § 1208.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is in noncompliance with the National Minimum Drinking Age based on their preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

(c) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's final determination of compliance or noncompliance, will receive notice of the funds being withheld under § 1208.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

[53 FR 31322, Aug. 18, 1988]

PART 1230—HIGHWAY SAFETY PROGRAM STANDARDS—APPLICABILITY TO FEDERALLY ADMINISTERED AREAS

Sec.
1230.1 Scope.
1230.2 Purpose.
1230.3 Applicability.
1230.4 Requirements.

AUTHORITY: 23 U.S.C. 402, 38 FR 12147, 49 CFR 1.48.

SOURCE: 38 FR 18665, July 13, 1973, unless otherwise noted.

§ 1230.1 Scope.

This part establishes requirements for implementation by Federal Departments or agencies of highway safety program standards set out in this chapter, in federally administered areas where a Federal department or agency controls highways open to public travel or supervises traffic operations.

§ 1230.2 Purpose.

The purpose of this part is to ensure that uniform standards established to regulate highway safety activities apply uniformly throughout the United States to those highways and activities administered by a Federal agency.

§ 1230.3 Applicability.

Pursuant to 23 U.S.C. 402, the highway safety program standards set forth in this chapter are applicable to Federal departments and agencies that control highways open to public travel within federally administered areas or supervise traffic operations on such highways, to the extent that they engage in activities covered by the highway safety program standards set out in this chapter.

§ 1230.4 Requirements.

(a) Each department or agency shall implement the highway safety program standards, to the extent that they are relevant to the activities of the department or agency. Implementation activities shall include but not be limited to:

(1) In cooperation with the FHWA and NHTSA, review of the department's or agency's activities to determine which are covered by the highway safety program standards.

(2) Review of the current status of those activities with regard to the relevant requirements of the standards.

(3) Development, submission to the FHWA and NHTSA, and periodic updating and implementation of a multiyear Comprehensive Plan for highway safety in accordance with the highway safety program standards.

(b) Each department or agency shall submit annually to the Secretary of Transportation a comprehensive report on the administration of its highway safety program for the preceding calendar year. The report shall be suitable for inclusion in the report to the President for transmittal to the Congress as required by section 202(a) of the Highway Safety Act of 1966

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(Pub. L. 89-564), and shall include but not be limited to:

(1) Thorough statistical data on fatal, injury and property damage accidents which occurred within its federally administered area.

(2) The scope of observance of applicable Federal standards.

(3) The effectiveness of its highway safety programs.

PART 1235—UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES

Sec.

1235.1 Purpose.
1235.2 Definitions.
1235.3 Special license plates.
1235.4 Removable windshield placards.
1235.5 Temporary removable windshield placards.
1235.6 Parking.
1235.7 Parking space design, construction and designation.
1235.8 Reciprocity.

APPENDIX A TO PART 1235—SAMPLE REMOVABLE WINDSHIELD PLACARD

APPENDIX B TO PART 1235—SAMPLE TEMPORARY REMOVABLE WINDSHIELD PLACARD

AUTHORITY: Pub. L. 100-641, 102 Stat. 3335 (1988); 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

SOURCE: 56 FR 10329, Mar. 11, 1991, unless otherwise noted.

EFFECTIVE DATE NOTE: At 56 FR 10329, Mar. 11, 1991, Part 1235 was added, effective April 10, 1991.

§ 1235.1 Purpose.

The purpose of this part is to provide guidelines to States for the establishment of a uniform system for handicapped parking for persons with disabilities to enhance access and the safety of persons with disabilities which limit or impair the ability to walk.

§ 1235.2 Definitions.

Terms used in this part are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

(1) Cannot walk two hundred feet without stopping to rest; or

(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or

(4) Use portable oxygen; or

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access:

(1) In a color that contrasts to the background, and

(2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

(e) *Temporary removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a red shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

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§ 1235.3 Special license plates.

(a) Upon application of a person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(c) The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

§ 1235.4 Removable windshield placards.

(a) The State system shall provide for the issuance and periodic renewal of a removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

§ 1235.5 Temporary removable windshield placards.

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

§ 1235.6 Parking.

Special license plates, removable windshield placards, or temporary removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

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§ 1235.7 Parking space design, construction, and designation.

(a) Each State shall establish design, construction, and designation standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) Ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk;

(2) Ensure the safety of persons with disabilities which limit or impair the ability to walk who use these spaces and their accompanying accessible routes; and

(3) Ensure uniform sign standards which comply with those prescribed by the "Manual on Uniform Traffic Control Devices for Streets and Highways" (23 CFR part 655, subpart F) to designate parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

(b) The design, construction, and alteration of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

§ 1235.8 Reciprocity.

The State system shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

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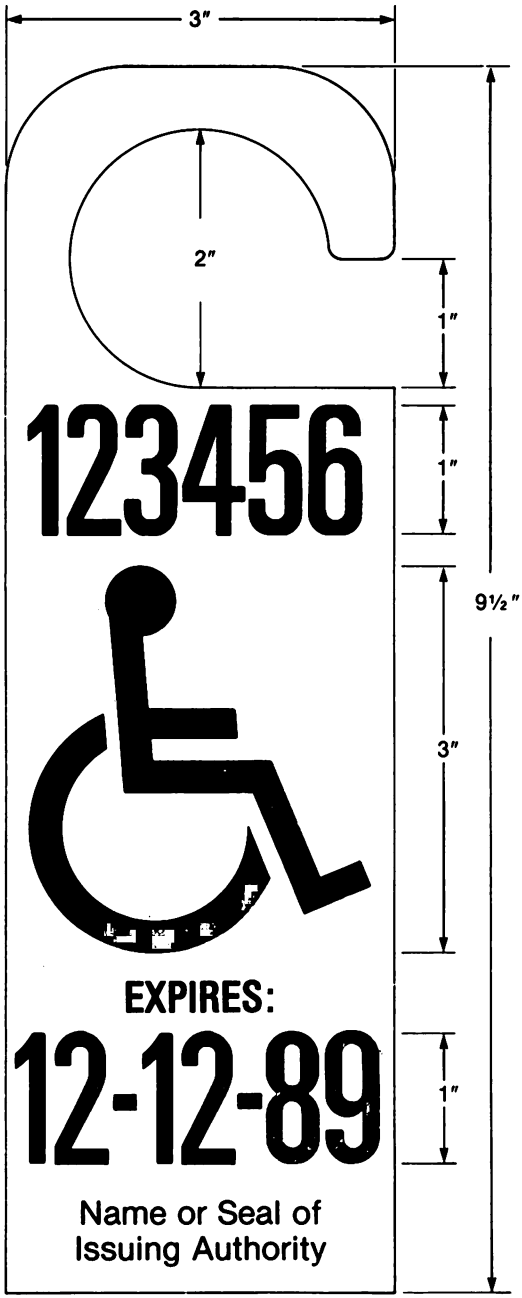
Appendix A to Part 1235—Sample Removable Windshield Placard



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SYMBOL & LEGEND — WHITE
BACKGROUND — BLUE

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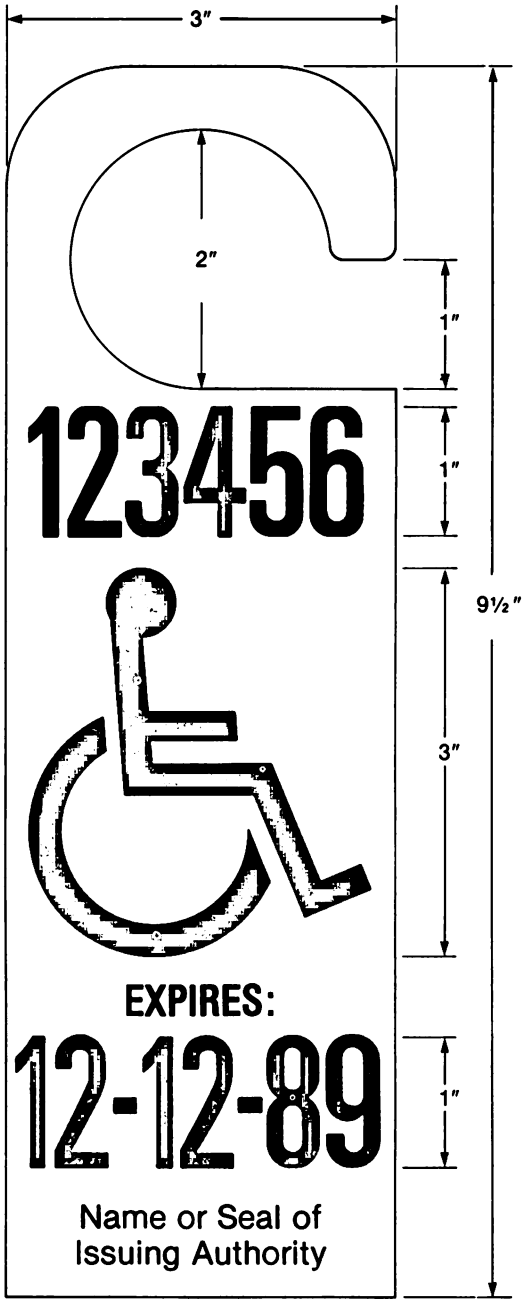
APPENDIX B TO PART 1235—SAMPLE TEMPORARY REMOVABLE WINDSHIELD PLACARD



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SUBCHAPTER C—GENERAL PROVISIONS

PART 1250—POLITICAL SUBDIVISION PARTICIPATION IN STATE HIGHWAY SAFETY PROGRAMS

Sec.
1250.1 Scope.
1250.2 Purpose.
1250.3 Policy.
1250.4 Determining local share.
1250.5 Waivers.

AUTHORITY: 23 U.S.C. 315, 402(b); and delegations of authority at 49 CFR 1.48 and 1.50.

SOURCE: 41 FR 23948, June 14, 1976, unless otherwise noted.

§ 1250.1 Scope.

This part establishes guidelines for the States to assure their meeting the requirements for 40 percent political subdivision participation in State highway safety programs under 23 U.S.C. 402 (b)(1)(C).

§ 1250.2 Purpose.

The purpose of this part is to provide guidelines to determine whether a State is in compliance with the requirement that at least 40 percent of all Federal funds apportioned under 23 U.S.C. 402 will be expended by political subdivisions of such State.

§ 1250.3 Policy.

To assure that the provisions of 23 U.S.C. 402(b)(1)(C) are complied with, the NHTSA and FHWA field offices will:

(a) Prior to approving the State's Annual Work Program (AWP), review the AWP and each of the subelement plans which make up the AWP. The NHTSA Regional Administrator will review the 14½ safety standard areas for which NHTSA is responsible and the FHWA Division Administrator will review the 3½ safety standard areas for which FHWA is responsible. The narrative description for each subelement plan should contain sufficient information to identify the funds to be expended by, or for the benefit of the political subdivisions.

(b) Withhold approval of a State's AWP, as provided in Highway Safety Program Manual volume 103, chapter III, paragraph 3c, where the program does not provide at least 40 percent of Federal funds for planned local program expenditures.

(c) During the management review of the State's operations, determine if the political subdivisions had an active voice in the initiation, development and implementation of the programs for which such sums were expended.

§ 1250.4 Determining local share.

(a) In determining whether a State meets the requirement that at least 40 percent of Federal 402 funds be expended by political subdivisions, FHWA and NHTSA will apply the 40 percent requirement sequentially to each fiscal year's apportionments, treating all apportionments made from a single fiscal year's authorizations as a single entity for this purpose. Therefore, at least 40 percent of each State's apportionments from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the period when funds would normally lapse. The 40 percent requirement is applicable to the State's total federally funded safety program irrespective of Standard designation or Agency responsibility.

(b) When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision, such expenditures are clearly part of the local share. Local safety project related expenditures and associated indirect costs, which are reimbursable to the grantee local governments, are classifiable as the local share of Federal funds. Illustrations of such expenditures are the cost incurred by a local government in planning and administration of project related safety activities, driver education activities, traffic court programs, traffic records system improvements, upgrading emergency medical services, pedestrian safety activities, improved traffic enforcement, alcohol countermeasures, highway debris removal programs, pupil transportation programs, accident investigation, surveillance of high accident

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locations, and traffic engineering services.

(c) When Federal funds apportioned under 23 U.S.C. 402 are expended by the State or a State agency for the benefit of a political subdivision, such funds may be considered as part of the local share, provided that the political subdivision benefitted has had an active voice in the initiation, development, and implementation of the programs for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as "benefitting local government." Where political subdivisions have had an active voice in the initiation, development, and implementation of a particular program, and a political subdivision which has not had such active voice agrees in advance of implementation to accept the benefits of the program, the Federal share of the cost of such benefits may be credited toward meeting the 40 percent local participation requirement. Where no political subdivisions have had an active voice in the initiation, development, and implementation of a particular program, but a political subdivision requests the benefits of the program as part of the local government's highway safety program, the Federal share of the cost of such benefits may be credited toward meeting the 40 percent local participation requirement. Evidence of consent and acceptance of the work, goods or services on behalf of the local government must be established and maintained on file by the State, until all funds authorized for a specific year are expended and audits completed.

(d) State agency expenditures which are generally not classified as local are within such standard areas as vehicle inspection, vehicle registration and driver licensing. However, where these Standards provide funding for services such as: driver improvement tasks administered by traffic courts, or where they furnish computer support for local government requests for traffic record searches, these expenditures are classifiable as benefitting local programs.

§ 1250.5 Waivers.

While the 40 percent requirement may be waived in whole or in part by the Secretary or his delegate, it is expected that each State program will generate political subdivision participation to the extent required by the Act so that requests for waivers will be minimized. Where a waiver is requested, however, it will be documented at least by a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State and will recommend the appropriate percentage participation to be applied in lieu of the 40 percent.

PART 1251—STATE HIGHWAY SAFETY AGENCY

Sec.
1251.1 Purpose.
1251.2 Policy.
1251.3 Authority.
1251.4 Functions.

AUTHORITY: 23 U.S.C. 402; 23 U.S.C. 315; 49 CFR 1.48 and 1.50.

SOURCE: 45 FR 59145, Sept. 8, 1980, unless otherwise noted.

§ 1251.1 Purpose.

The purpose of this part is to prescribe the minimum authority and functions of the State Highway Safety Agency established in each State by the Governor under the authority of the Highway Safety Act (23 U.S.C. 402).

§ 1251.2 Policy.

In order for a State to receive funds under the Highway Safety Act, the Governor shall exercise his or her responsibilities through a State Highway Safety Agency that has "adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary." 23 U.S.C. 402(b)(1)(A). Accordingly, it is the policy of this part that approval of a State's Highway Safety Plan will depend upon the State's compliance with §§ 1251.3 and 1251.4 of this part.

§ 1251.3 Authority.

Each State Highway Safety Agency shall be authorized to:

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(a) Develop and implement a process for obtaining information about the highway safety programs administered by other State and local agencies.

(b) Periodically review and comment to the Governor on the effectiveness of highway safety plans and activities in the State regardless of funding source.

(c) Provide or facilitate the provision of technical assistance to other State agencies and political subdivisions to develop highway safety programs.

(d) Provide financial and technical assistance to other State agencies and political subdivisions in carrying out highway safety programs.

§ 1251.4 Functions.

Each State Highway Safety Agency shall:

(a) Develop and prepare the Highway Safety Plan prescribed by volume 102 of the Highway Safety Program Manual (23 CFR 1204.4, Supplement B), based on evaluation of highway accidents and safety problems within the State.

(b) Establish priorities for highway safety programs funded under 23 U.S.C. 402 within the State.

(c) Provide information and assistance to prospective aid recipients on program benefits, procedures for participation, and development of plans.

(d) Encourage and assist local units of government to improve their highway safety planning and administration efforts.

(e) Review the implementation of State and local highway safety plans and programs, regardless of funding source, and evaluate the implementation of those plans and programs funded under 23 U.S.C. 402.

(f) Monitor the progress of activities and the expenditure of section 402 funds contained in the State's approved Highway Safety Plan.

(g) Assure that independent audits are made of the financial operations of the State Highway Safety Agency and of the use of section 402 funds by any subrecipient.

(h) Coordinate the State Highway Safety Agency's Highway Safety Plan with other federally and non-federally supported programs relating to or affecting highway safety.

(i) Assess program performance through analysis of data relevant to highway safety planning.

PART 1252—STATE MATCHING OF PLANNING AND ADMINISTRATION COSTS

Sec.

1252.1 Purpose.
1252.2 Definitions.
1252.3 Applicability.
1252.4 Policy.
1252.5 Procedures.
1252.6 Responsibilities.

AUTHORITY: 23 U.S.C. 402 and 315; 49 CFR 1.48(b) and 1.50.

SOURCE: 45 FR 47145, July 14, 1980, unless otherwise noted.

§ 1252.1 Purpose.

This part establishes the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) policy on planning and administration (P&A) costs for State highway safety agencies. It defines planning and administration costs, describes the expenditures that may be used to satisfy the State matching requirement, prescribes how the requirement will be met, and when States will have to comply with the requirement.

§ 1252.2 Definitions.

(a) *Fiscal year* means the twelve months beginning each October 1, and ending the following September 30.

(b) *Direct costs* are those costs which can be identified specifically with a particular planning and administration or program activity. The salary of a data analyst on the State highway safety agency staff is an example of a direct cost attributable to P&A. The salary of an emergency medical technician course instructor is an example of direct cost attributable to a program activity.

(c) *Indirect costs* are those costs (1) incurred for a common or joint purpose benefiting more than one program activity and (2) not readily assignable to the program activity specifically benefited. For example, centralized support services such as per-

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sonnel, procurement, and budgeting would be indirect costs.

(d) *Planning and administration (P&A) costs* are those direct and indirect costs that are attributable to the overall development and management of the Highway Safety Plan. Such costs could include salaries, related personnel benefits, travel expenses, and rental costs.

(e) *Program management costs* are those costs attributable to a program area (e.g., salary of an emergency medical services coordinator, the impact evaluation of an activity, or the travel expenses of a local traffic engineer).

(f) *State highway safety agency* is the agency directly responsible for coordinating the State's highway safety program authorized by 23 U.S.C. 402.

§ 1252.3 Applicability.

The provisions of this part apply to obligations incurred after November 6, 1978, for planning and administration costs under 23 U.S.C. 402.

§ 1252.4 Policy.

Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 10 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian State, as defined by 23 U.S.C. 402 (d) and (i), is exempt from the provisions of this part. NHTSA funds shall be used only to finance P&A activities attributable to NHTSA programs and FHWA funds shall be used only to finance P&A costs attributable to FHWA programs.

[47 FR 15121, Apr. 8, 1982]

§ 1252.5 Procedures.

(a) P&A tasks and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module. Federal participation shall not exceed 50 percent (or the applicable sliding scale) of the total P&A costs. A State shall not use NHTSA funds to pay more than 50 percent of the P&A costs attributable to NHTSA programs nor use FHWA funds to pay more than 50 percent of the P&A costs attributable to FHWA programs. In addition, the Federal contribution for P&A activities shall not exceed 10 percent of the total funds in the State received under 23 U.S.C. 402.

(b) FHWA and NHTSA funds may be used to pay for the Federal share of P&A costs up to the amounts determined by multiplying the Federal share by the ratio between the P&A costs attributable to FHWA programs and the P&A costs attributable to NHTSA programs. For example: A State's total P&A costs are $40,000. The State's share is 50 percent or $20,000. To pay the remaining $20,000, the State first ascertains the amount spent out of the total costs for each agency's programs, then applies the ratio between these two amounts to the $20,000. If $36,000 of the total costs are spent for NHTSA programs and $4,000 for FHWA programs, the ratio would be 9/1 and the corresponding allocation of the Federal share would be $18,000 to NHTSA and $2,000 to FHWA.

(c) A State at its option may allocate salary and related costs of State highway safety agency employees to one of the following:

(1) The administration and planning functions in the P&A module;

(2) The program management functions in one or more Program modules; or

(3) A combination of administration and planning functions in the P&A module and the program management functions in one or more program modules.

(d) If an employee is principally performing administration and planning functions under a P&A module, the total salary and related costs may be allocated to the P&A module. If the employee is principally performing program management functions under one or more program modules, the total salary and related costs may be

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charged directly to the appropriate module(s). If an employee is spending time on a combination of administration and planning functions and program management functions, the total salary and related costs may be charged to the appropriate module(s) based on the actual time worked under each module. If the State highway safety agency elects to allocate costs based on acutal time spent on an activity, the State highway safety agency must keep accurate time records showing the work activities for each employee. The State's record keeping system must be approved by the appropriate FHWA and NHTSA officials.

(e) Those tasks and related costs contained in the P&A module, not defined as P&A costs under § 1252.2(d) of this part, are not subject to the planning and administration cost matching requirement.

[45 FR 47145, July 14, 1980, as amended at 47 FR 15121, Apr. 8, 1982]

§ 1252.6 Responsibilities.

During the Highway Safety Plan approval process, the responsible FHWA and NHTSA officials shall approve a P&A module only if the projected State expenditure is at least 25 percent (or the appropriate sliding scale rate) of the total P&A costs identified in the module. If a State elects to prorate P&A and program management costs, the appropriate NHTSA and FHWA officials must approve the method that the State highway safety agency will use to record the time spent on these activities. During the process of reimbursement, the responsible FHWA and NHTSA officials shall assure that Federal reimbursement for P&A costs at no time exceeds 75 percent (of the applicable sliding scale rate) of the costs accumulated at the time of reimbursement.

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CHAPTER III—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

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PART 1309—INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Sec.

1309.1 Scope.
1309.2 Purpose.
1309.3 Definitions.
1309.4 General requirements.
1309.5 Requirements for a basic grant.
1309.6 Requirements for a supplemental grant.
1309.7 Requirements for a special grant.
1309.8 Award procedures.
1309.9 OMB approval.

AUTHORITY: 23 U.S.C. 408; delegation of authority at 49 CFR 1.50.

SOURCE: 51 FR 22279, June 19, 1986, unless otherwise noted.

§ 1309.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 408, for awarding incentive grants to States that implement effective programs to reduce drunk driving and driving under the influence of a controlled substance.

§ 1309.2 Purpose.

The purpose of this part is to encourage States to adopt and implement alcohol traffic safety programs by legislation or regulations which will significantly reduce crashes resulting from persons driving while under the influence of alcohol or controlled substances. The criteria established are intended to ensure that the State alcohol traffic safety programs for which incentive grants are awarded meet or exceed minimum levels designed to reduce drunk driving, or driving under the influence of a controlled substance.

§ 1309.3 Definitions.

(a) *Controlled substance* has the meaning given such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(b) *Driving while intoxicated* means operating or being in actual physical control of a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests,

(c) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained. It does not include house arrest.

(d) *Prompt* means that the period of time from arrest to suspension of a driver's license does not exceed 45 days.

(e) *Repeat offender* means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and

(1) To whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or

(2) Who refuses to submit to such a test as proposed by the officer, more than once in five years.

(f) *Suspension* or *revocation* means:

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year or longer, subject to the requirements of § 1309.5, or § 1309.7 as appropriate.

[51 FR 22279, June 19, 1986, as amended at 53 FR 32383, Aug. 25, 1988]

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§ 1309.4 General requirements.

(a) *Certification requirements.* To qualify for a grant under 23 U.S.C. 408, a State must, for each year it seeks to qualify:

(1) Meet the requirements of § 1309.7 and/or § 1309.5 and, if applicable, the requirements of § 1309.6.

(2) Submit a certification to the Director, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 that:

(i) It has an alcohol traffic safety program that meets those requirements,

(ii) It will use the funds awarded under 23 U.S.C. 408 only for the implementation and enforcement of alcohol traffic safety programs, and

(iii) It will maintain its aggregate expenditures from all other sources for its alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 1981 and 1982 (either State of Federal fiscal year 1981 and 1982 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit, within 120 days, to the agency an alcohol safety plan up to five years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1309.5 and § 1309.6 to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall alcohol traffic safety program.

(b) *Limitations on grants.* A State may receive a grant for up to five fiscal years subject to the following limitations:

(1) The amount received as a basic grant shall not exceed 30 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(2) The amount received as a supplemental grant shall not exceed 20 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(3) The amount received as a special grant shall not exceed 5 percent of a State's 23 U.S.C. 402 and 408 apportionment for fiscal year 1984.

(4) In the first fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408;

(5) In the second fiscal year the State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408; and

(6) In the third, fourth and fifth fiscal years the State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408.

[51 FR 22279, June 19, 1986, as amended at 52 FR 27615, July 22, 1987; 53 FR 32383, Aug. 25, 1988]

§ 1309.5 Requirements for a basic grant.

To qualify for a basic incentive grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement the following requirements:

(a)(1) The prompt suspension, for a period not less than 90 days in the case of a first offender and not less than one year in the case of a repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and

(i) To whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or

(ii) Who refuses to submit to such a test as proposed by the office.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the prompt license suspension requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information

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identified in paragraph (a)(2)(i) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1309.3(f), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(iii) For the purpose of this paragraph, *Law State* means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the prompt license suspension criterion.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the prompt license suspension requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refuser, repeat offenders and repeat refusers meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not reflect license suspension periods which exceed the terms actually prescribed by the State, and must only reflect terms to the extent that they are actually completed. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(ii) For the purpose of this paragraph, *Data State* means a State that does not meet the definition of *Law State* in paragraph (a)(2)(iii) of this section.

(b)(1) A mandatory sentence, which shall not be subject to suspension or probation, of imprisonment for not less than 48 consecutive hours, or not less than 10 days of community service for any person convicted of driving while intoxicated more than once in any five year period.

(2)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory sentence criterion.

(ii) For the purpose of this paragraph, *Law State* means that the State has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, including the requirement that the 48 hour term of imprisonment must be served consecutively.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit, in addition to the information identified in paragraph (b)(2)(i) of this section, data showing that it substantially complies with the consecutiveness requirement. The State can provide the necessary data based on a representative sample.

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(ii) For the purpose of this paragraph, *Data State* means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, except that it need not specifically provide that the 48 hour term of imprisonment must be served consecutively.

(c)(1) Provide that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(2) To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(d)(1) Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) To demonstrate compliance, a State shall submit data showing that it has increased its enforcement and public information efforts.

[51 FR 22279, June 19, 1986, as amended at 53 FR 32383, Aug. 25, 1988]

§ 1309.6 Requirements for a supplemental grant.

(a) To qualify for a supplemental grant of 20 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement a license suspension system which meets the requirements of § 1309.5, and

(b) Have in place and implement or adopt and implement eight of the following twenty-two requirements.

(1) Enactment of a law that raises, either immediately or over a period of three years, the minimum age for drinking any alcholic beverage to 21. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(2) Coordination of State alcohol highway safety programs. To demonstrate compliance, a State shall submit information explaining how the work of the different State agencies involved in alcohol traffic safety programs is coordinated.

(3) Rehabilitation and treatment programs for persons arrested and convicted of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement, and a copy of the minimum standards set for rehabilitation and treatment programs by the State.

(4) Establishment of State Task Forces of governmental and non-governmental leaders to increase awareness of the problems, to apply more effectively drunk driving laws and to involve governmental and private sector leaders in programs attacking the drunk driving problem. To demonstrate compliance a State shall submit a copy of the executive order, regulation, or law setting up the task force and a description of how the interests of local communities are represented on the task force.

(5) A Statewide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving. Conviction information must be recorded in the system within 30 days of a conviction, license sanction or the completion of the appeals process. Information in the record system must be retained for at least five years. The public shall have access to those portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations. To demonstrate compliance, a State shall submit a description of its record system discussing its accessibility to prosecutors, the courts and the public and providing data showing that the time required to enter alcohol-related convictions into the system is not greater than 30 days. A State shall also submit information showing that the data is retained in the system for at least 5 years.

(6) Establishment in each major political subdivision of a locally coordinated alcohol traffic safety program, which involves enforcement, adjudication, licensing, public information, education, prevention, rehabilitation and treatment and management and program evaluation. In small States, local coordination may be demonstrated by showing that the interests of the local communities are recognized and coordinated by the State program. To demonstrate compliance, a State shall submit a description of the number of

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programs, type of programs and percentage of the State population covered by such local programs.

(7) Prevention and long-term educational programs on drunk driving. To demonstrate compliance, a State shall submit a description of its prevention and education program, discussing how it is related to changing societal attitudes and norms against drunk driving with particular attention to the implementation of a comprehensive youth alcohol traffic safety program, and the involvement of private sector groups and parents.

(8) Authorization for courts to conduct pre-or post-sentence screenings of convicted drunk drivers. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement and a brief description of is screening process.

(9) Development and implementation of State-wide evaluation system to assure program quality and effectiveness. To demonstrate compliance, a State shall provide a copy of the executive order, regulation or law setting up the evaluation program and a copy of the evaluation plan.

(10) Establishment of a plan for achieving self-sufficiency for the State's total alcohol traffic safety program. To demonstrate compliance, a State shall provide a copy of the plan. Specific progress toward achieving financial self-sufficiency must be shown in subsequent years.

(11) Use of roadside sobriety checks as part of a comprehensive alcohol safety enforcement program. To demonstrate compliance, a State shall submit information showing that it is systematically using roadside sobriety checks. In addition, a State shall provide a copy of its regulation or policy authorizing the use of roadside checks.

(12) Establishment of programs to encourage citizen reporting of alcohol-related traffic offenses to the police. To demonstrate compliance, a State shall submit a copy of its citizen reporting guidelines or policy and data on the degree of citizen participation, e.g., number of citizen reports and the number of related arrests. A State can provide the necessary data based on a statistically valid sample.

(13) Establishment of a 0.08 percent blood alcohol concentration as presumptive evidence of driving while under the influence of alcohol. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(14) Adoption of a one-license/one-record policy. In addition, the State shall fully participate in the National Driver Register and the Driver License Compact. To demonstrate compliance, a State shall submit a copy of the order, regulation or law showing the State is a member of the Driver License Compact and has adopted a one-license/one-record policy, and is participating in the National Driver Register.

(15) Authorization for the use of a preliminary breath test where there is probable cause to suspect a driver is impaired. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(16) Limitations on plea-bargaining in alcohol-related offenses. To demonstrate compliance, a State shall submit a copy of its law or court guidelines requiring that no alcohol-related charge be reduced to a non-alcohol-related charge or probation without judgment be entered without a written declaration of why the action is in the interest of justice. If a charge is reduced, the defendant's driving record must reflect that the reduced charge is alcohol-related.

(17) Provide victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all cases where death or serious injury results from an alcohol-related traffic offense. To demonstrate compliance, a State shall submit a description of its victim assistance and restitution programs, and its use of victim impact statements.

(18) Mandatory impoundment or confiscation of license plate/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense. Any such impoundment or confiscation shall be subject to the lien or ownership right of third parties without actual knowledge of the suspension or revocation. To demonstrate

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compliance a State shall submit a copy of its law adopting this requirement.

(19) Enactment of legislation or regulations authorizing the arresting officer to determine the type of chemical test to be used to measure intoxication and to authorize the arresting officer to require more than one chemical test. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(20) Establishment of liability against any person who serves alcoholic beverages to an individual who is visibly intoxicated. To demonstrate compliance, a State shall submit a copy of the law or court decision of a State's highest court establishing that liability.

(21) Use of innovative programs. To demonstrate compliance a State shall submit a description of its program and an explanation showing that the program will be as effective as any of the programs adopted to comply with the other supplemental criteria.

(22) Rehabilitation and treatment programs for those arrested and convicted of driving under the influence of a controlled substance or research programs to develop effective means of detecting use of controlled substances by drivers. To demonstrate compliance with the rehabilitation and treatment portion of this criterion, a State shall submit a copy of its law or regulation adopting the requirement and a copy of the minimum standards set for these programs by the State. To demonstrate compliance with the research portion of this criterion, a State shall submit a description of its drugged driving research program and the research plan.

(c) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must:

(1) Have in place and implement or adopt and implement a license suspension system which meets the requirements of § 1309.5, and

(2) Have in place and implement or adopt and implement four of the twenty-two requirements specified in paragraph (b) of this section.

(d) To qualify for a supplemental grant for a second and a third year, a State must:

(1) Show that it has increased its performance of each of the requirements it adopted in the prior year, and

(2) Adopt two more requirements from paragraph (b) of this section for each subsequent year, except that a State does not have to implement more than a total of fifteen criteria.

(e) To qualify for a supplemental grant for a fourth and fifth year, a State must:

(1) Show that it has increased performance in its overall alcohol countermeasures program, and

(2) Implement the same number of requirements from paragraph (b) of this section as were in place the previous year, except that a State does not have to implement more than a total of fifteen criteria.

[51 FR 22279, June 19, 1986, as amended at 53 FR 32384, Aug. 25, 1988]

§ 1309.7 Requirements for a special grant.

To qualify for a special grant of five percent of its 23 U.S.C. 402 and 408 apportionment for fiscal year 1984, a State must have in place and implement or adopt and implement a statute which provides that:

(a) Any person convicted of a first violation of driving while intoxicated shall receive:

(1) A mandatory license suspension for a period of not less than ninety days; and

(2)(i) An assignment of one hundred hours of community service to be completed within three months; or

(ii) A mandatory minimum sentence of imprisonment for forty-eight consecutive hours;

(b) Any person convicted of a second violation of driving while intoxicated within five years after a conviction for the same offense shall receive:

(1) A mandatory minimum sentence of imprisonment for ten days to be served in no less than 48 consecutive hour segments within a ninety day period from conviction; and

(2) A mandatory license revocation for not less than one year;

(c) Any person convicted of a third or subsequent violation of driving while intoxicated within five years after a prior conviction for the same offense shall receive:

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(1) A mandatory minimum sentence of imprisonment for one hundred and twenty consecutive days; and

(2) A mandatory license revocation of not less than three years; and

(d) Any person convicted of driving with a suspended or revoked license or in violation of a restriction due to a driving while intoxicated conviction shall receive:

(1) A mandatory sentence of imprisonment for thirty consecutive days; and

(2) Upon release from imprisonment, and an additional period of license suspension or revocation for not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license.

§ 1309.8 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 408 shall be made to eligible States upon submission of the alcohol safety plan and certification required by § 1309.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

§ 1309.9 OMB approval.

The information collection requirements have been approved by the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved under control number 2127-0501.

PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

Sec.

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1313.7 Award procedures.

AUTHORITY: 23 U.S.C. 410.

SOURCE: 55 FR 1199, Jan. 12, 1990, unless otherwise noted.

§ 1313.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 410, for awarding incentive grants to States that adopt and implement comprehensive drunk driving prevention programs which are self-sustaining and include measures that will improve the effectiveness of the enforcement of State drunk driving laws.

§ 1313.2 Purpose.

The purpose of this part is to encourage States to adopt and implement comprehensive drunk driving prevention programs which include measures that will discourage individuals from operating motor vehicles while under the influence of alcohol. The criteria established are intended to ensure that the State drunk driving prevention programs for which incentive grants are awarded are self-sustaining, and meet or exceed minimum levels designed to improve the effectiveness of the enforcement of State drunk driving laws.

§ 1313.3 Definitions.

(a) *Alcoholic beverage* has the meaning given such term in section 1208.3 of this title, which implements section 158(c) of the National Minimum Drinking Age Act, 23 U.S.C. 158.

(b) A *comprehensive drunk driving prevention program* means a program that reflects the complexity and totality of the State's alcohol traffic safety problems, incorporates multiple approaches to these problems over a sustained period of time and ensures that public and private entities work in concert to address these problems. The program must include, at a minimum, the following components:

(1) Regularly conducted, peak-hour traffic enforcement efforts consisting of measures, such as roadside sobriety checkpoints or special DWI patrols;

(2) DWI prosecution, adjudication and sanctioning resources adequate to handle increased levels of DWI arrests;

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(3) Other programs directed at forms of prevention other than enforcement and adjudication activities, such as school, worksite or community education; designated driver programs; transportation alternatives; responsible alcohol service programs; server training; or treatment programs; and

(4) A public information program designed to make the public aware of the problem of drunk driving and of the above efforts in place to address it.

(c) *Fines or surcharges collected* means all fines and penalties or additional assessments collected, whichever of these two amounts is greater, but it does not include user-type fees.

(d) *Motor vehicle* has the meaning given such term in § 659.5(c) of this title, which implements 23 U.S.C. 154, the National Maximum Speed Limit Act.

(e) *Open alcoholic beverage container* means any bottle, can, or other receptacle: (1) which contains any amount of an alcoholic beverage and (2)(i) which is open or has a broken seal or (ii) the contents of which are partially removed.

(f) *Operating a motor vehicle while under the influence of alcohol* or *under the influence of alcohol while operating the motor vehicle* means operating a vehicle while the alcohol concentration in the blood or breath is 0.10 or more grams of alcohol per 100 milliliters of blood or 0.10 or more grams of alcohol per 210 liters of breath, as determined by chemical or other tests.

(g) *Repeat offender* means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and to whom is administered one or more chemical tests to determine whether the individual was under the influence of alcohol while operating the motor vehicle and who is determined, as a result of such tests, to be under the influence of alcohol, or who refuses to submit to such a test as proposed by the officer, more than once in any 5-year period beginning after November 18, 1988.

(h) *Serious bodily injury* means an injury, other than a fatal injury, which prevents injured persons from walking, driving or normally continuing the activities they were capable of performing before the injury occurred.

(i) With regard to an individual's driver's license, *suspension* or *revocation* means:

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year.

(j) With regard to an individual's registration and license plates, *suspension* and *return* means the temporary debarring of the privilege to operate or maintain a particular registered motor vehicle on the public highways and the confiscation or impoundment of the motor vehicle's license plates for not less than the term(s) for which the individual's driver's license will be under suspension or revocation.

§ 1313.4 General requirements.

(a) *Certification requirements.* To qualify for a grant under 23 U.S.C. 410, a State must, for each year it seeks to qualify:

(1) Submit an application to NHTSA, 400 Seventh Street, SW, Washington, DC 20590 demonstrating that it meets the requirements of § 1313.5 and, if applicable, § 1313.6;

(2) Submit a certification to NHTSA, 400 Seventh Street, SW, Washington, DC 20590 that:

(i) It has a drunk driving prevention program that meets those requirements,

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(ii) It will use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of drunk driving prevention programs,

(iii) It will administer the funds in accordance with 49 CFR part 18 and OMB Circulars A-102 and A-87, and

(iv) It will maintain its aggregate expenditures from all other sources for its drunk driving prevention programs at or above the average level of such expenditures in fiscal years 1987 and 1988 (either State or Federal fiscal year 1987 and 1988 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit, within 120 days, to the agency a drunk driving prevention plan for up to three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grant and that provides the necessary information, identified in § 1313.5 and § 1313.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall drunk driving prevention program.

(b) *Limitation on grants.* A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant, under § 1313.5 of this part, shall not exceed 30 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(2) The amount received as a supplemental grant for a mandatory blood alcohol concentration testing program, under § 1313.6(a) of this part, shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(3) The amount received as a supplemental grant for a program for prevention of operators under 21 from obtaining alcoholic beverages, under § 1313.6(b) of this part, shall not exceed 10 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(4) The amount received as a supplemental grant for a program making unlawful open containers and consumption of alcohol in motor vehicles, under § 1313.6(c) of this part, shall not exceed 25 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1989.

(5) The amount received as a supplemental grant for a suspension of registration and return of license plate program, under § 1313.6(d) of this part, shall not exceed 10 percent of the State's 23 U.S C. 402 apportionment for fiscal year 1989.

(6) In the first fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 75 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410;

(7) In the second fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 50 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410; and

(8) In the third fiscal year a State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its drunk driving prevention program adopted pursuant to 23 U.S.C. 410;

§ 1313.5 Requirements for a basic grant.

(a) To qualify for a basic incentive grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement the following requirements:

(1)(i) An expedited driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol which requires that:

(A) When a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense and such individual is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer serve such individual with a written notice of suspension or revocation of the driver's license of such individual and take possession of such driver's license;

(B) The notice of suspension or revocation referred to in paragraph (a)(1)(i)(A) of this section provide in-

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formation on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of an individual for operating a motor vehicle while under the influence of alcohol or refusing to submit to a chemical test and specify any rights of the individual under such procedures;

(C) The State provide, in the administrative procedures referred to in paragraph (a)(1)(i)(B) of this section, for due process of law, including the right to an administrative review of a driver's license suspension or revocation;

(D) After serving notice and taking possession of a driver's license in accordance with paragraph (a)(1)(i)(A) of this section, the law enforcement officer immediately report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this paragraph;

(E) In the case of an individual who, after November 18, 1988, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, provides for:

(*1*) The suspension of the driver's license of such individual for a period of not less than 90 days if the individual is a first offender; and

(*2*) The suspension or revocation of the driver's license of such individual for a period of not less than 1 year if the individual is a repeat offender; and

(F) The administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and the suspension and revocation referred to under paragraph (a)(1)(i)(E) of this section take effect not later than 15 days after the individual first received notice of the suspension or revocation.

(ii)(A) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 15-day expedited suspension system requirement.

(B) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(1)(ii)(A) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (a)(1)(i)(F) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(i), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages.

(C) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 15-day expedited suspension system criterion.

(iii)(A) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 15-day expedited suspension system requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and sus-

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pend the licenses meets the promptness requirement in paragraph (a)(1)(i)(F) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(B) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 15-day expedited suspension system criterion, except that it need not specifically provide for each element of paragraphs (a)(1)(i)(E) and (F) of this section.

(2)(i) A self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided through the State's ordinary appropriations process or other ordinary State funding process which demonstrates the accountability of these funds, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(ii) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, a centralized State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for a self-sustaining drunk driving prevention program, and for fines or surcharges to be imposed on individuals convicted of operating a motor vehicle while under the influence of alcohol. The State shall describe its criteria and procedures for reviewing community programs to determine whether they are comprehensive, as defined in § 1313.3(b) of this part, and describe its procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs. The State shall submit data showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to community drunk driving prevention programs under the State's self-sustaining system. The State shall certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these programs are supported with non-Federal funds. If the State is demonstrating compliance based on the equivalent amount of non-Federal funds it provides to communities, it must also identify the source of these funds. For purposes of this section, a "centralized State" is a State in which revenues are collected at the State level and distributed to the communities.

(iii) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, other States shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for a self-sustaining drunk driving prevention program, and for fines or surcharges to be imposed on individuals convicted of operating a motor vehicle while under the influence of alcohol. The State shall describe its criteria and procedures for reviewing community programs to determine whether they are comprehensive, or show with detailed examples of specific community programs that such programs are comprehensive, as defined in § 1313.3(b) of this part. It shall also describe its procedures for returning or providing revenues to communities that have comprehensive drunk driving prevention programs. The State shall submit data showing the aggregate amount of fines or surcharges actually collected and the aggregate amount of revenues actually returned or provided to community drunk driving prevention programs under the State's self-sustaining system. The State can provide the necessary data based on a representative sample. The State shall certify that these revenues are being used to continue the operation of comprehensive drunk driving prevention programs and that a significant portion of the costs of these pro-

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grams are supported with non-Federal funds. If the State is demonstrating compliance based on the equivalent amount of non-Federal funds it provides to communities, it must also identify the source of these funds. In addition, the State shall certify that a significant number of communities within the State have comprehensive drunk driving prevention programs. For purposes of this section, "other States" include decentralized and mixed States in which some or all revenues are retained by the communities, rather than collected at the State level and distributed to the communities.

(iv) For the purpose of this section, activities conducted by the State for the benefit of a community may be considered to have been returned or provided to that community, provided that the community benefitted has had an active voice in the initiation, development, and implementation of the activities for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as "benefitting local communities." Where communities have had an active voice in the initiation, development, and implementation of a particular activity, and a community which has not had such active voice agrees in advance of implementation to accept the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Where no communities have had an active voice in the initiation, development, and implementation of a particular activity, but a political subdivision requests the benefits of the activity, the non-Federal share of the cost of these benefits may be considered to have been returned or provided to the community. Evidence of consent and acceptance of the work, goods or services on behalf of the community must be established and maintained on file by the State, until all basic grant funds for that fiscal year have been expended and audits completed.

(b) To qualify for a basic incentive grant of 20 percent of its 23 U.S.C. 402 apportionment of fiscal year 1989, a State must meet the requirements of paragraphs (a)(1)(i) (A) through (E) and (2)(i) of this section and require that the administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and the suspension and revocation referred to under paragraph (a)(1)(i)(E) of this section take effect not later than 30 days after the individual first received notice of the administrative review and suspension or revocation, but only if the agency determines that the requirements of paragraph (a)(1)(i)(F) of this section would impose a hardship upon the State.

(1)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(2)(ii) or (iii) of this section, a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 30-day expedited suspension system requirement. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (b)(1)(i) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (b) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1313.3(i), the State can demonstrate compliance with this element by submitting a plan showing how it in-

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tends to achieve these averages. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 30-day expedited suspension system criterion.

(2)(i) To demonstrate compliance in the first and in subsequent years the State receives a basic grant, a Data State shall submit, in addition to the information identified in paragraph (a)(2)(ii) or (iii) of this section, a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the 30-day expedited suspension system requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1313.3(i) and that the average number of days it took to provide the administrative reviews and suspend the licenses meets the promptness requirement in paragraph (b) of this section. The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. The State shall also explain the hardship that would be imposed by a 15-day administrative review and suspension requirement.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the 30-day expedited suspension system criterion, except that it need not specifically provide for each element of paragraph (a)(1)(i)(E) or the promptness requirement in paragraph (b) of this section.

§ 1313.6 Requirements for supplemental grants.

(a) *Mandatory blood alcohol concentration testing program.* (1) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a crash resulting in the loss of human life or serious bodily injury has committed an alcohol-related traffic offense.

(2)(i) To demonstrate compliance in the first fiscal year the State receives a supplemental grant under this paragraph, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory testing requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Law State shall submit, in addition to the information in paragraph (a)(2)(i) of this section, data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, including the requirement that testing is mandatory.

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a Data

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State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the blood alcohol concentration testing requirement. The State shall also submit data showing the number of drivers involved in these crashes and that, when there was probable cause to believe the driver had committed an alcohol-related traffic offense, substantially all of these drivers were tested for alcohol content and the results were reported to the State. The State can provide the necessary data based on a representative sample or surrogate measure.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory testing criterion, except that testing may be permitted rather than required by law.

(b) *Program for prevention of operators under 21 from obtaining alcoholic beverages.* (1) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for an effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages, which includes the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals 21 years of age and older. The State must also make it unlawful both for a person who is less than 21 years of age to purchase and publicly possess any alcoholic beverage and for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age; provide for meaningful penalties for both the underaged person and the provider of the alcoholic beverage; and maintain an effective and highly visible enforcement program. In addition, the State must have a Statewide training program for servers, vendors and its law enforcement community and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages or a plan to put such programs in place.

(2) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, or binding policy directive implementing or interpreting an existing law which makes it unlawful both for a person who is less than 21 years of age to purchase and publicly possess any alcoholic beverage and for a person to provide (by sale or otherwise) any alcoholic beverage to a person who is less than 21 years of age, and which provides for meaningful penalties for both underaged individuals and providers of alcoholic beverages. The State must also submit sample driver's licenses issued to persons both under and over 21 years of age. In addition, the State shall submit data demonstrating that the enforcement program is effective and highly visible, and that the State has a Statewide training program for servers, vendors and its law enforcement community and a public information program for the general population addressing specifically the problem of underaged individuals obtaining alcoholic beverages or its plan to put such programs in place. Specific progress toward preventing operators of motor vehicles under 21 from obtaining alcoholic beverages must be shown in subsequent years.

(c) *Program making unlawful open containers and consumption of alcohol in motor vehicles.* (1)(i) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and make unlawful the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except:

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(A) As allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(B) As otherwise specifically allowed by such State, with the approval of NHTSA, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

(ii) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, a State shall submit a law, regulation, binding policy directive implementing or interpreting an existing law or regulation, which provides for each element of the uniawful open container and consumption of alcohol requirement. The State shall also identify and provide sufficient justification for the agency to approve any exception, other than the exception that is specifically permitted under paragraph (c)(1)(i)(A) of this section.

(2)(i) To qualify for a supplemental grant of 25 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must meet the requirements of paragraph (c)(1)(i) of this section, and have an effective and highly visible enforcement program which provides for meaningful penalties for violations.

(ii) To demonstrate compliance in the first and in subsequent fiscal years the State receives a supplemental grant under this paragraph, in addition to submitting the information identified in paragraph (c)(1)(ii) of this section, a State shall show that its law provides for meaningful penalties and submit data demonstrating that the State enforcement program is effective and highly visible. Specific progress toward deterring the unlawful possession of open containers and the consumption of alcoholic beverages in motor vehicles must be shown in subsequent years.

(d) *Suspension of registration and return of license plate program.* (1) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402 apportionment for fiscal year 1989, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who:

(i) Has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period following November 18, 1988; or

(ii) Has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for an alcohol-related traffic offense; except that

(iii) A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender. Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which license plates may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

(2)(i) To demonstrate compliance in the first year the State receives a supplemental grant under this paragraph, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the registration suspension and license plate return requirement.

(ii) To demonstrate compliance in subsequent years the State receives a supplemental grant under this paragraph, the State shall submit, in addition to the information identified in paragraph (d)(2)(i) of this section, data showing the number of registrations suspended and license plates returned under the State law, that the average length of the term for which

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the registration was suspended and the license plates returned meets the definition in § 1313.3(j), and the number, reasons for and conditions under which hardship exemptions are being granted. The State must show that it is actively enforcing its law and that the hardship exceptions do not result in unrestricted reinstatement of the registration or unrestricted return of the licenses plates of the motor vehicle. The State can provide the necessary data based on a representative sample.

§ 1313.7 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 410 shall be made to eligible States upon submission of the drunk driving prevention plan and certification required by § 1313.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

PART 1317—INNOVATIVE PROJECT GRANTS

Sec.

1317.1 Scope.
1317.2 Purpose.
1317.3 Solicitation of proposals.
1317.4 Project eligibility.
1317.5 Preapplication procedure.
1317.6 Project review procedure.
1317.7 Limitation on project funding.
1317.8 Length of projects.
1317.9 Project reporting.
APPENDIX A TO PART 1317

AUTHORITY: Sec. 2, Pub. L. 96-511, 94 Stat. 2819 (44 U.S.C. 3507); sec. 101 Pub. L. 97-364; 96 Stat. 1738 (23 U.S.C. 408); sec. 208, Pub. L. 95-599; 92 Stat. 2732 (23 U.S.C. 407); 49 CFR 1.48 and 1.50.

SOURCE: 45 FR 84038, Dec. 22, 1980, unless otherwise noted. Redesignated at 49 FR 10664, Mar. 22, 1984.

§ 1317.1 Scope.

This part establishes criteria and administrative procedures for awards of innovative project grants to States and their political subdivisions, and to nonprofit organizations including volunteer groups.

§ 1317.2 Purpose.

The purpose of this part is to encourage innovation in solving highway safety problems by funding highway safety projects that apply original or creative methods, use existing methods in original or creative ways, or use new techniques to evaluate existing methods.

§ 1317.3 Solicitation of proposals.

The agency shall publish a call for project preapplication submissions in the FEDERAL REGISTER, the Commerce Business Daily, and newsletters of the National League of Cities, National Association of Counties, and National Association of Mayors. It shall forward solicitation announcements concurrently to all Governor's Highway Safety Representatives and to the regional offices of the National Highway Traffic Safety Administration and Federal Highway Administration.

§ 1317.4 Project eligibility.

Eligible projects include, but are not limited to those in following categories:

(a) Accident reduction areas, such as traffic enforcement, speed limit violations, alcohol and drug abuse, occupant restraint systems, motorcycle operation, pedestrian behavior, and roadside and roadway hazards.

(b) System support areas, such as vehicle inspection, driver licensing and education, traffic courts and records, emergency response systems, debris hazard control and cleanup, and public information and education.

(c) System development and improvement, such as problem analysis, cost effectiveness measures, evaluation methodology, management techniques, and citizen participation.

§ 1317.5 Preapplication procedure.

(a) To be considered for an innovative project grant, an agency or organization shall submit a preapplication as set out in Appendix A of this part.

(b) A nonprofit organization whose project involves activities in more than one State shall submit a preapplication directly to the NHTSA Associate Administrator for Traffic Safety Programs. Each other applicant shall, in

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addition, submit a copy of the preapplication to the State Highway Safety Agency for the State of which it is a constituent part or in which it is located.

(c) The State Highway Safety Agency shall promptly forward each preapplication, together with any comments it may have, to the appropriate NHTSA Regional Office. If the project involves safety activities related to highways, the NHTSA Regional Office shall forward the preapplication to the Federal Highway Administration Division Administrator for the State in which the preapplicant is located. The Regional Offices and the FHWA Division Administrators shall comment on each project and promptly submit each one to the NHTSA Associate Administrator for Traffic Safety Programs.

§ 1317.6 Project review procedure.

(a) The agency shall review each preapplication to determine which ones warrant further development. The agency shall notify each preapplicant of its determination within 45 days of its receipt of the preapplication. The agency shall request detailed proposals that clarify and amplify the preapplications from those applicants whose projects were determined to warrant further development.

(b) The detailed proposals shall be forwarded to a panel of traffic safety experts whose members shall be selected based on their experience in relevant fields of endeavor. To the extent that funds permit, the agency will secure experts from outside the agency to assist in the proposal evaluation. The panel shall review the technical merits of each proposal and rank the proposals in accordance with the criteria of paragraph (c) of this section.

(c) In reviewing any project the panel shall consider the following criteria:

(1) The innovative character of the project;

(2) The project's impact on highway safety;

(3) Its feasibility in light of the facilities, resources, time and expertise available;

(4) Its adaptability to other jurisdictions;

(5) Its low cost or cost-effectiveness;

(6) Its public acceptance and suitability for public participation;

(7) Its freedom from the need for enabling legislation or governmental reorganization;

(8) Its consistency with policies of curbing inflation and saving energy;

(9) Its ability to unify existing highway safety programs;

(10) Its relationship to the 18 Highway Safety Program Standards; and

(11) Its suitability for evaluation.

(d) Based on the panel's review and ranking, the agency shall determine the projects to be funded and shall notify each applicant of its determination. The list of awards shall also be published in the FEDERAL REGISTER.

[45 FR 84038, Dec. 22, 1980; 46 FR 32, Jan. 2, 1981. Redesignated at 49 FR 10664, Mar. 22, 1984]

§ 1317.7 Limitation on project funding.

(a) A project funded under 23 U.S.C. 402 or 403 shall not be eligible for funding under the innovative grant program.

(b) The funds for any individual project in any fiscal year shall not exceed 10 percent of the funds appropriated for 23 U.S.C. 407 for the fiscal year in which the grant is awarded.

§ 1317.8 Length of projects.

Project operational periods exclusive of the planning and reporting phases shall be limited to three years. The agency may extend an approved project for a period of time not to exceed two years, based on the progress toward project objectives, justification for continued support, the reasonableness of the project budget for continuation, and the availability of Federal funds.

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§ 1317.9 Project reporting.

Each grant recipient shall submit the following reports to the NHTSA Associate Administrator for Traffic Safety Programs: (a) Quarterly progress reports, (b) annual evaluation reports, and (c) a final project report. The agency shall forward copies of the reports, as appropriate, to the State Highway Safety Agency for the State of which the grantee is a constituent part or in which it is located.

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APPENDIX

Standard and Optional Forms Facsimile Handbook SF 424 (Page 1)

OMB Approval No. 80-R0180

FEDERAL ASSISTANCE

SECTION I—APPLICANT/RECIPIENT DATA

1. TYPE OF ACTION (Mark appropriate box)	☐ PREAPPLICATION ☐ APPLICATION ☐ NOTIFICATION OF INTENT (Opt.) ☐ REPORT OF FEDERAL ACTION
2. APPLICANT'S APPLICATION	a. NUMBER; b. DATE Year month day 19
3. STATE APPLICATION IDENTIFIER	a. NUMBER; b. DATE ASSIGNED Year month day 19
Leave Blank	

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name :
b. Organization Unit :
c. Street/P.O. Box :
d. City : e. County :
f. State : g. ZIP Code :
h. Contact Person (Name & telephone No.) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (From Federal Catalog)
a. NUMBER
b. TITLE

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

8. TYPE OF APPLICANT/RECIPIENT
A— State H— Community Action Agency
B— Interstate I— Higher Educational Institution
C— Intrastate J— Indian Tribe
District K— Other (Specify):
D— County
E— City
F— Federal State
G— Special Purpose District
Enter appropriate letter

9. TYPE OF ASSISTANCE
A— Basic Grant D— Insurance
B— Supplemental Grant E— Other Enter appropriate letter(s)
C— Loan

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)

11. ESTIMATED NUMBER OF PERSONS BENEFITING

12. TYPE OF APPLICATION
A— New C— Revision E— Augmentation
B— Renewal D— Continuation Enter appropriate letter

13. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

14. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT b. PROJECT

15. TYPE OF CHANGE (For 12 c or 12 e)
A— Increase Dollars D— Other (Specify):
B— Decrease Dollars
C— Increase Duration
D— Decrease Duration
E— Cancellation
Enter appropriate letter(s)

16. PROJECT START DATE Year month day 19

17. PROJECT DURATION Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ Year month day 19

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached.

	No response	Response attached
(1)	☐	☐
(2)	☐	☐
(3)	☐	☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE
c. DATE SIGNED Year month day 19

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED 19 Year month day

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. DEFERRED
☐ e. WITHDRAWN

32. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

33. ACTION DATE ▶ Year month day 19

34. STARTING DATE Year month day 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE Year month day 19

37. REMARKS ADDED ☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.
b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

424-102

STANDARD FORM 424 PAGE 1 (Rev 4-77)
Prescribed by OMB Circular A-102

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SF 424 (Page 2)

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

STANDARD FORM 424 PAGE 2 (Rev. 4-77)

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GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

Applicant Procedures for Section I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*", and use the remarks section on the back of the form. An explanation follows for each item:

Items

1. Mark appropriate box Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies *must* contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse.

3b. Date applicant notified of clearinghouse identifier.

4e-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

5. Employer identification number of applicant as assigned by Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code.

6b. Program title from Federal Catalog. Abbreviate if necessary.

7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description.

8. Mostly self-explanatory. "City" includes town, township or other municipality.

9. Check the type(s) of assistance requested. The definitions of the terms are:

A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant.

B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

C. Loan. Self explanatory.

D. Insurance. Self explanatory.

E. Other. Explain on remarks page.

10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits.

11. Estimated number of persons directly benefiting from project.

12. Use appropriate code letter. Definitions are:

A. New. A submittal for the first time for a new project.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses.

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If both basic and supplemental amounts are included, breakout in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks.

14a. Self explanatory.

14b. The district(s) where most of actual work will be accomplished. If city-wide of State-wide, covering several districts, write "city-wide" or "State-wide".

15. Complete only for revisions (Item 12c), or augmentation (12e).

16. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

17. Estimated number of months to complete project after Federal funds are available.

18. Estimated date preapplication/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b.

19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP.

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Applicant Procedures for Section II

Applicants will always complete Items 23a, 23b, and 23c. If clearinghouse review is required, Item 22b must be fully completed. An explanation follows for each item:

Items

22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory.

23c. Self explanatory.

Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies.

Federal Agency Procedures for Section III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal Agency will complete Section III only. An explanation for each item follows:

Items

24. Executive department or independent agency having program administration responsibility.

25. Self explanatory.

26. Primary organizational unit below department level having direct program management responsibility.

27. Office directly monitoring the program.

28. Use to identify non-award actions where Federal grant identifier in Item 30 is not applicable or will not suffice.

29. Complete address of administering office shown in Item 26.

30. Use to identify award actions where different from Federal application identifier in Item 28.

31. Self explanatory. Use remarks section to amplify where appropriate.

32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks.

33. Date action was taken on this request.

34. Date funds will become available.

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35. Name and telephone no. of agency person who can provide more information regarding this assistance.

36. Date after which funds will no longer be available.

37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—if same as person shown in item 35, write "same". If not applicable, write "NA".

Federal Agency Procedures—Special Considerations

A. *Treasury Circular 1082, compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.

B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.

C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

PREAPPLICATION FOR FEDERAL ASSISTANCE

PART II

1. Does this assistance request require State, local, regional or other priority rating? ___ Yes ___ No

2. Does this assistance require State or local advisory, educational or health clearance? ___ Yes ___ No

3. Does this assistance request require Clearinghouse review? ___ Yes ___ No

4. Does this assistance request require State, local, regional or other planning approval? ___ Yes ___ No

5. Is the proposed project covered by an approved comprehensive plan? ___ Yes ___ No

6. Will the assistance requested serve a Federal installation? ___ Yes ___ No

7. Will the assistance requested be on Federal land or installation? ___ Yes ___ No

8. Will the assistance requested have an effect on the environment? ___ Yes ___ No

9. Will the assistance requested cause the displacement of individuals, families, businesses, or farms? ___ Yes ___ No

10. Is there other related assistance for this project previous, pending, or anticipated? ___ Yes ___ No

11. Is the project in a designated flood hazard area? ___ Yes ___ No

PART III—PROJECT BUDGET

Federal Catalog Number (a)	Type of Assistance Loan, Grant, etc. (b)	First Budget Period (c)	Balance of Project (d)	Total (e)
1.				
2.				
3.				

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PART III—PROJECT BUDGET—Continued

Federal Catalog Number (a)	Type of Assistance Loan, Grant, etc. (b)	First Budget Period (c)	Balance of Project (d)	Total (e)
4.				
5.				
6. Total Federal Contribution		$	$	$
7. State Contribution				
8. Applicant Contribution				
9. Other Contributions				
10. Totals		$	$	$

PART IV—PROGRAM NARRATIVE STATEMENT

(Attach per instruction)

OMB Approval No. 80-R0187

INSTRUCTIONS

PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3—Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4—Furnish the name of the approving agency and the approval date.

Item 5—Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6—Show the population residing or working on the Federal installation who will benefit from this project.

Item 7—Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8—Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data is needed.

Item 9—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data is needed.

Item 10—Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and the amount of each project where there is related previous, pending or anticipated assistance. Use additional sheets, if needed.

Item 11—Contact the Federal agency concerning the provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

PART III

Complete: Lines 1-5—Columns (a)-(e). Enter the catalog numbers shown in the Catalog of Federal Domestic Assistance in Column (a) and the type of assistance in Column (b). For each line entry in Columns (a) and (b), enter in Columns (c), (d), and (e), the estimated amounts of Federal funds

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needed to support the project. Columns (c) and (d) may be left blank, if not applicable.

Line 6—Show the totals for Lines 1-5 for Columns (c), (d), and (e).

Line 7—Enter the estimated amounts of State assistance, if any, including the value of in-kind contributions, in Columns (c), (d), and (e). Applicants which are States or State agencies should leave Line 7 blank.

Line 8—Enter the estimated amounts of funds and value of in-kind contributions the applicant will provide to the program or project in Columns (c), (d), and (e).

Line 9—Enter the amount of assistance including the value of in-kind contributions, expected from all other contributors in Columns (c), (d), and (e).

Line 10—Enter the totals of Columns (c), (d), and (e).

PART IV

The program narrative statement should be brief and describe the need, objectives, method of accomplishment, the geographical location of the project, and the benefits expected to be obtained from the assistance. The statement should be typed on a separate sheet of paper and submitted with the preapplication. Also attach any data that may be needed by the grantor agency to establish the applicant's eligibility for receiving assistance under the Federal program(s).

PART 1325—TRANSITION PROCEDURES FROM CURRENT TO NEW NATIONAL DRIVER REGISTER

Sec.

1325.1 Scope.
1325.2 Purpose.
1325.3 Definitions.
1325.4 General transition procedures.

AUTHORITY: Pub. L. 97-364, 96 Stat. 1740 (23 U.S.C. 401 note).

SOURCE: 50 FR 28196, July 11, 1985, unless otherwise noted.

§ 1325.1 Scope.

This rule provides procedures, in accordance with section 203(c)(1) of the National Driver Register Act of 1982 (Pub. L. 97-364), for the orderly transition from the system regarding the motor vehicle driving records of individuals as provided in Pub. L. 86-660 as amended (current NDR), to the system established in Pub. L. 97-364 (new NDR).

§ 1352.2 Purpose.

The purpose of this rule is to provide States with information concerning the procedures which the National Highway Traffic Safety Administration plans to follow to implement the new National Driver Register. This will ensure that participating States understand their rights and obligations during the transitional period which will commence on the effective date of this rule and will terminate upon the establishment of a fully electronic Register system.

§ 1325.3 Definitions.

(a) *Problem Driver Pointer System (PDPS).* System whereby the NDR serves as a conduit for retrieving information from the State which took adverse action against a driver (State of Record) and relaying that information, without interception, to the State requesting the information (State of Inquiry).

(b) *Pointer Record.* A report containing the following data:

(1) The legal name, date of birth (including day, month, and year), sex, (and if the State collects such data) height, weight, color of eyes, and color of hair;

(2) The name of the State transmitting such information;

(3) The social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number) and

(4) An element which indicates whether the individual currently holds a valid license (license status indicator).

(c) *PDPS State.* A State which participates in the pilot test program or, upon completion of the pilot test program, in the PDPS, by submitting pointer records for inclusion in the NDR file and by providing information to States of Inquiry as a State of Record.

(d) *Non-PDPS State.* A State which operates under the current NDP by submitting complete substantive adverse driver licensing data to the NDR.

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(e) *Match.* When the personal identifying information in an inquiry compares with the personal identifying information on a record in the NDR file such that there is a high probability that the individual identified on both records is the same person.

(f) *Fully Electronic Register System.* NDR system in which all States that are participating, are doing so pursuant to Pub. L. 97-364.

§ 1325.4 General transition procedures.

(a) *Data to be Transmitted to NDR by PDPS States.* (1) The chief driver licensing official in each PDPS State shall transmit to the NDR a pointer record regarding any individual against whom adverse action, as described in section 205 of Pub. L. 97-364, has been taken.

(2) The chief driver licensing official in each PDPS State shall also transmit to the NDR the full substantive adverse action data on any individual against whom adverse action, as described in Pub. L. 86-660 as amended by title IV of Pub. L. 89-563, 80 Stat. 730 (23 U.S.C. 313 note), has been taken, until such time as either 40% of the participating States operate under PDPS or the establishment of a fully electronic Register system, whichever occurs first.

(b) *Data to be Transmitted to NDR by Non-PDPS States.* The chief driver licensing official in each non-PDPS State shall transmit to the NDR the full substantive adverse action data on any individual against whom adverse action, as described in Pub. L. 86-660 as amended, has been taken.

(c) *Data to be Received by PDPS States.* (1) When a match occurs with a pointer record on file from a PDPS State, the PDPS State of Inquiry will receive the pointer record response from the NDR and the adverse action information from the State of Record.

(2) When a match occurs with a record on file from a non-PDPS State, the PDPS State of Inquiry will receive the full substantive record from the NDR.

(3) When no match occurs, the PDPS State of Inquiry will receive from the NDR a response that no match was found to each inquiry that is either transmitted interactively or on behalf of a party other than the State, and no response to other inquiries.

(d) *Data to be Received by Non-PDPS States.* (1) When a match occurs with a record on file from a non-PDPS State, the non-PDPS State of Inquiry will receive the full substantive record from the NDR.

(2) When a match occurs with a record on file from a PDPS State, the non-PDPS State of Inquiry will receive the full substantive record from the NDR until such time as described in § 1325.4(a)(2), after which non-PDPS States of Inquiry will receive from the NDR only pointer records.

(3) When no match occurs, the non-PDPS State of Inquiry will receive from the NDR a response that no match was found to each inquiry that is either transmitted interactively or on behalf of a party other than the State, and no response to other inquiries.

(e) *Accessibility of NDR Information.* (1) All requests for information from the NDR must be made by State chief driver licensing officials or Federal departments or agencies in connection with the issuance of licenses or permits to operate federally owned vehicles.

(2) All requests for information made by State chief driver licensing officials must pertain to driver licensing, be made on behalf of the Chairman of the National Transportation Safety Board or the Administrator of the Federal Highway Administration for purposes of requesting information regarding an individual who is the subject of an accident investigation conducted by the NTSB or Bureau of Motor Carrier Safety, or be made by a PDPS State. Requests from PDPS States may also be for the purposes of State driver improvement or highway safety, or on behalf of an individual who is employed as a driver of a motor vehicle, who seeks employment as a driver of a motor vehicle, to determine whether the Register is providing any data regarding the individual, to determine the accuracy of an such data or to obtain a certified copy of data provided through the Register regarding the individual.

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Material Approved for Incorporation by Reference

(Revised as of April 1, 1991)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

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23 CFR CHAPTER II (PARTS 1200 TO 1299)
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	23 CFR
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List of CFR Sections Affected

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172 Authority citation revised 22800
172.5 Amended 22800
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480 Revised 16018
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626.5 (a) amended; footnote 1 removed 16834
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630.1004 Footnote amended 16834
635 Authority citation revised 27534
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669 Added 25364
771 Authority citation revised 39748
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771.115 (b)(4) amended 39748
810.4 (b)(4) footnote 1 amended 16834
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790 Removed; eff. 8-29-88 32669

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625.5 (a)(11) added 15671
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646 Authority citation revised 32218
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650.305 (b) revised; (c) added 32616
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658.5 (m) and (n) added 2597
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658.9 (b)(5) revised 12148
658.11 (a) and (b) heading revised; (e) and (f) redesignated as (f) and (g) and revised; (c) and (d) redesignated as (e) and (c); new (c) heading revised; new (d) added 12148
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658 Appendix A amended 28871
658 Appendix B added 2599
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771.117 (d) introductory text and (12) footnote 3 and (e) corrected; eff. 4-5-88 11066
771.129 (a) corrected; eff. 4-5-88 11066
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1309.3 (c), (d), (e), and (f) (1), (2), and (3) revised 32383
1309.4 (a)(2) introductory text, (i), and (iii) amended 32383
1309.5 (a) (2) and (b)(2) revised; (a)(3) and (b)(3) added; (b)(1) amended 32383
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625.4 Introductory text and new (b)(6) added; (a) footnotes 1 and 2 removed; (b) (1), (2), (3) and (5) and (c)(2) revised 281
625.5 (a) (7) and (9), and (b) (2), (3), (4), (5) and (6) revised; (a)(12), (b)(7) and (c)(5) added; (c) removed; (d) redesignated as (c) 281
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655.601 (a) amended 3004
658 Appendix A amended 1930, 1931
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713 Authority citation revised; subpart and sectional authorities removed 47076
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655 Authority citation revised; subpart and sectional authorities removed 2374

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230 Appendix D amended 4721
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771.135 (p) added; eff. 5-1-91 13279

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1235 Added; eff. 4-10-91 10329

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